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ABSTRACT

Major components of a study conducted in 1977 and 1978 were: (1) an examination of existing literature on migrant transportation: (2) collection of pertinent empirical data from federal, state, and migrant work camp records: and (3) vehicle counts and observation at 32 selected locations in 11 destination states in the western, midwestern, and eastern migrant streams. At the 32 locations, 5,485 migrant workers were using 1,116 vehicles (51% cars and station wagons, 37% pickup trucks and vans potentially subject to regulation under a strict interpretation of Part 398, and 2% large trucks and buses). A substantial decline in the last 10 years in the number of regulated vehicles was probably due to several factors: government regulations: high cost of insurance premiums on vehicles carrying large numbers of migrating workers: overall decline in the numbers of workers migrating interstate: increased migrant incomes enabling purchase and maintenance of family vehicles. It was concluded that Part 398 has very limited applicability to migrant transportation today, and that even this applicability has been preempted by the laws of California, Texas, and Florida. It was also concluded that Part 398 regulations overlap with the Department of Labor's Farm Labor Contractor Registration Act regulations, which apply to any farm labor contractor who transports migrant laborers. (AN)

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STUDY OF THE APPLICABILITY OF PART 398 OF THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS TO THE INTER-STATE TRANSPORTATION OF MIGRANT FARMWORKERS

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STUDY OF THE APPLICABILITY OF PART 398 OF THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS TO THE INTERSTATE TRANSPORTATION OF MIGRANT FARMWORKERS

SEPTEMBER 30, 1978

Study Performed by:

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Under Contract with:

Federal Highway Administration
Department of Transportation
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The J. A. Reyes Associates, Inc. (JAR) study proceeded under the general direction of Louise Woerner, Company Vice-President. Juan Flores was the Project Director. Field researchers and analysts from the JAR staff were assigned as their expertise was required. Ray Sobrevilla performed the field work. Stan Jorgensen and Shelton Cannon were the principal analysts and writers. The administrative assistant was Renee Trent.

The findings presented in this report were developed by J. A. Reyes Associates, Inc. and do not necessarily reflect the official view of the Federal Highway Administration of the U. S. Department of Transportation.

HARVESTING TOMATOES IN OHIO

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TABLE OF CONTENTS

		Page
	EXECUTIVE SUMMARY	i
I.	INTRODUCTION	I-1
II.	BACKGROUND	II-1
III.	METHODOLOGY	III-1
IV.	FINDINGS	IV-1
	A. PRELIMINARY DATA AVAILABLE	IV-1
	B. THE WESTERN STREAM	IV-5
	1. Flow of Migrant Labor	IV-6
	a. California	IV-6
	b. Oregon	IV-13
	c. Washington	IV-16
	2. Types of Vehicles	IV-18
	a. California	IV-18
	b. Oregon	IV-20
	c. Washington	IV-21
	3. Migrant Passengers	IV-22
	4. Summary of Findings	IV-24
	C. THE MIDWESTERN STREAM	IV-26
	1. Flow of Migrant Labor	IV-28
	a. Home Base Data - Texas	IV-28
	b. Hope, Arkansas Migrant Farm Labor Center	IV-30
	2. Types of Vehicles	IV-32
	3. Migrant Passengers	IV-41
	a. Hope Migrant Farm Labor Center, Arkansas	IV-41
	b. Ohio Labor Camps	IV-43
	1) Howard Zark Camp	IV-43
	2) John Hayvest Camp	IV-44
	3) Village Farm	IV-44
	c. Indiana Labor Camps	IV-45

TABLE OF CONTENTS
(Continued)

Page

1) Brooks Foods Incorporated IV-45
2) John Harris Camp IV-47
4. Summary of Findings IV-48
D. THE EASTERN STREAM IV-50
1. Flow of Migrant Labor IV-51
a. Home Base Data - Florida IV-51
b. Destination States IV-56
1) North Carolina IV-57
2) Maryland IV-58
3) Delaware IV-62
4) New Jersey IV-63
5) New York IV-64
2. Summary of Findings IV-66
E. SUMMARY OF FINDINGS IV-70
V. CURRENT APPLICABILITY OF PART 398 . . . . . V-1

APPENDICES

APPENDIX A. FLCRA REGULATIONS
APPENDIX B. FLCRA REGISTRATION FORM
APPENDIX C. RURAL MANPOWER MOBILITY PLAN (FORM MA 7-85)
APPENDIX D. PART 398 - FEDERAL MOTOR CARRIER SAFETY REGULATIONS
APPENDIX E. RESOURCE PERSONS IN THE THREE MIGRANT STREAMS
APPENDIX F. CONTRACTORS - IMPERIAL VALLEY, CALIFORNIA
APPENDIX G. CONTRACTORS - RIO GRANDE VALLEY, TEXAS
APPENDIX H. BIBLIOGRAPHICAL RESOURCES

CHARTS

Title	Page
MIGRANT LABOR FLOW	IV-1
LOCATION OF DOL REGIONAL OFFICES AND BOUNDARIES OF JURSIDICTION	IV-2
CONTRACTORS REGISTERED WITH DOL UNDER NATIONWIDE FLCRA	IV-3
SITES IN MIGRANT STREAMS SURVEYED BY JAR FIELD RESEARCHERS	IV-4
BREAKDOWN OF SEASONAL FARMWORKERS IN CALIFORNIA (1977)	IV-7
FAMILY HOME BASE BY MIGRANT HOUSING CENTER JANUARY 1977 - DECEMBER 1977	IV-10
STATE OF ORIGIN OF VEHICLES COUNTED BY JAR AT SIX CAMPS IN CALIFORNIA	IV-11
BREAKDOWN OF SEASONAL FARMWORKERS IN OREGON (1977)	IV-14
ESTIMATES OF INTERSTATE MIGRANT ORIGIN FROM REGIONAL REPORTS	IV-14
HOME BASE STATES OF VEHICLES COMING TO THE MILTON FREEWATER MIGRANT CAMP	IV-15
BREAKDOWN OF SEASONAL FARMWORKERS IN WASHINGTON	IV-16
HOME BASE STATES OF VEHICLES COMING TO THE WALLA WALLA MIGRANT CAMP	IV-17
TYPES OF VEHICLES COUNTED AT SIX MIGRANT CAMPS IN CALIFORNIA	IV-18
TYPES OF VEHICLES REGISTERED AT MILTON FREEWATER MIGRANT CAMP	IV-20
TYPES OF VEHICLES REGISTERED AT WALLA WALLA MIGRANT CAMP	IV-21

Title	Page
NUMBER OF PERSONS RIDING IN VEHICLES COMING TO THE MILTON FREEWATER MIGRANT CAMP	IV-22
NUMBER OF PERSONS RIDING IN VEHICLES COMING TO THE WALLA WALLA MIGRANT CAMP	IV-23
CONTRACTORS LEAVING TEXAS TO WORK IN OTHER STATES	IV-29
ITINERARY OF CONTRACTORS LEAVING TEXAS	IV-29
TRAVEL PATTERN OF 765 PEOPLE AT THE MIGRANT FARM LABOR CENTER AT HOPE, ARKANSAS--72 HOUR PERIOD, 1977	IV-31
TRAFFIC FLOW CHART - MFLC FY 1974-1975, FY 1975-1976	IV-33
TRAFFIC FLOW CHART - MFLC FY 1976-1977, FY 1977-1978	IV-34
TYPES OF VEHICLES PASSING THROUGH MFLC HOPE, ARKANSAS, IN 1976	IV-35
TYPES OF VEHICLES PASSING THROUGH MFLC HOPE, ARKANSAS, IN 1974	IV-36
NUMBERS AND TYPES OF VEHICLES PASSING THROUGH MFLC HOPE, ARKANSAS 1974-1977	IV-38
TYPES OF VEHICLES PASSING THROUGH MFLC HOPE, ARKANSAS, IN 1978	IV-39
VEHICLES STOPPING AT MFLC, HOPE, ARKANSAS 72-HOUR PERIOD, 1977	IV-40
MIGRANT FARMWORKER GROUPS, MFLC HOPE, ARKANSAS (1975-1976)	IV-41
MIGRANT FARMWORKER GROUPS, MFLC HOPE, ARKANSAS (March-Hune 18, 1978)	IV-42
VEHICLES OBSERVED IN THREE OHIO MIGRANT CAMPS SEPTEMBER 3, 1978	IV-44
VEHICLES OBSERVED AT BROOKS FOODS, INC. SEPTEMBER 3, 1978	IV-45
VEHICLES OBSERVED AT JOHN HARRIS CAMP SEPTEMBER 1, 1978	IV-48

Title	Page
VEHICLES USED BY FLORIDA CONTRACTORS AUTHORIZED TO TRANSPORT MIGRANT WORKERS	IV-51
VEHICLES USED BY TWENTY FLORIDA CONTRACTORS INTERVIEWED	IV-52
CONTRACTORS PROVIDING TRANSPORTATION FOR MIGRANT WORKERS IN FLORIDA	IV-53
ITINERARIES OF CONTRACTORS LEAVING FLORIDA HOME BASES	IV-54
DESTINATION STATE REQUESTS FOR FLORIDA MIGRANT WORKERS	IV-55
SEASONAL AGRICULTURAL EMPLOYMENT IN FLORIDA	IV-56
VEHICLES IN SIX NORTH CAROLINA MIGRANT CAMPS	IV-57
VEHICLES AT THE WESTOVER, MARYLAND MIGRANT CAMPS	IV-59
VEHICLES AT WESTOVER, JULY 27-28, 1978	IV-61
VEHICLES AT THREE DELAWARE MIGRANT CAMPS, JULY 11, 1978	IV-62
VEHICLES AT THREE NEW JERSEY MIGRANT CAMPS, JULY 13, 1978	IV-63
VEHICLES AT FIVE NEW YORK CAMPS, JULY 15, 16, 17, 1978	IV-66
VEHICLES OBSERVED AT 18 SITES IN THE EASTERN STREAM	IV-67
VEHICLES OBSERVED IN EACH OF THE THREE STREAMS	IV-70

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EXECUTIVE SUMMARY

Transportation is a necessity for migratory agricultural laborers. Without it they cannot continue to work. In the past labor contractors and crew leaders who owned and operated vehicles have used this dependence to control when migrants worked, where they worked, and the wages they were paid. This dependence also has been used to dictate where migrants live when in stream, and to control the consumer goods available and the prices migrants are forced to pay.

In the past dependence on others for transportation routinely exposed migrants to inhuman conditions while on the road. Workers and their families have been forced to crowd together in buses and trucks on long non-stop trips across the country, from home base to work camps, and from camp to camp. Often these vehicles were uninspected, uninsured, and unsafe.

Sometimes the consequences were tragic. On June 7, 1957, eleven days before the promulgation of the first Federal regulations pertaining to vehicles transporting migrant workers in interstate commerce, a tractor trailer collided with a truck carrying 41 migrants on Highway 301 outside of Fayetteville, North Carolina. Eighteen migrant workers were killed; 13 men, three women, and a six-month old child. Fifteen others were seriously injured. Public concern and anger at recurrent accidents and accounts of the degrading traveling conditions migrants were forced to endure prompted the Interstate Commerce Commission to take action in 1957.

The ICC report published when the new regulations were issued succinctly characterizes the situation to which the Commission was responding:

> ...thousands of American migratory workers travel hundreds of miles each year under conditions which are frequently uncomfortable, unsanitary, and unhealthy. They also in many instances are extremely unsafe.[1]

ICC regulations specified minimum standards for the mechanical condition of vehicles and the physical condition of passenger compartments. They required rest stops and meal stops at reasonable intervals. Physical examination and proper licensing were prescribed for drivers of regulated vehicles. In 1959, this regulation was amended to authorize Commission representatives to order trucks and buses found to be in violation of these standards off the road.

The Federal Highway Administration in the Department of Transportation assumed responsibility for enforcing these ICC regulations in 1968. The provisions of the original ICC regulations were written into Part 398 of the Motor Carrier Safety Regulations. These regulations cover motor carriers which transport three or more unrelated workers at least 75 miles and cross a State or national boundary. Automobiles and station wagons are explicitly excluded from coverage.

In April, 1977, J. A. Reyes Associates, Inc. (JAR) entered into a contract with the Federal Highway Administration to assess the current applicability of Part 398 to interstate migrant transportation. The study lasted 17 months. Its major components were (1) an examination of existing literature on migrant transportation; (2) collection of pertinent empirical data from Federal, State, and work

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[1] From No. MC-40, "Motor Carrier Safety Regulations," Interstate Commerce Commission.

camp records; and (3) vehicle counts and observation at 32 selected locations in 11 destination States during the 1978 migratory season. At these locations, JAR staff counted 1,102 vehicles being used by 5,485 migrant workers.

Our findings indicate there has been a major change in modes of transportation used by interstate migrant workers in recent years. Specifically, there has been a substantial decline in the number of trucks and buses carrying work crews in interstate commerce. These motor carriers, and the migrant labor contractors and crew leaders who own and operate them, are the focus of Part 398 and the ICC regulations it superseded.

Department of Labor records show 726 contractors and crew leaders from Texas and California, the major home base States in these streams, applied for and received authorization to transport workers in 1977. At the 14 locations in six west coast and mid-western destination States surveyed, 316 vehicles carrying 1275 workers were counted. No buses subject to regulation were encountered. Six trucks carrying five persons were found at the sites visited in Indiana. This was the only confirmed use of regulated vehicles in these two streams. There were also 26 persons riding in four pickups which technically fall within the scope of Part 398. These findings support the conclusion that Part 398 has little applicability in the Western and Mid-western Streams. Most Texas and California-based contractors confine their operations to the intrastate transporation of workers. Regulatory power here falls within the authority of the States and the Department of Labor. But it lies outside the scope of Part 398.

On the east coast the situation is somewhat different. No trucks used to carry migrants interstate were discovered in this stream. However 430 of the 1,735 migrants found at 18 destination points in the Eastern Stream had traveled interstate in regulated buses. While regulated buses constituted only 4.8 percent of the vehicle flow, they carried 25 percent of the migrant sample drawn from selected points in the Eastern Stream. Another 83 migrants were traveling in vans or pickups (usually with a camper attached), in groups of three or more unrelated persons. Adding these persons traveling in vehicles technically subject to Part 398 provisions to those traveling in buses which are clearly covered brings the number of persons in the east coast sample who were bound to be riding in regulated vehicles to 30 percent of the total.

All but two regulated buses were from Florida. This was predictable in view of the fact that 1,435 (or 63 percent) of all contractors authorized to transport workers by DOL are based in Florida.

These findings point to the conclusion that Part 398 now applies most directly to Florida contractors using buses to carry crews in the eastern migratory stream. Existing data are insufficient to determine how many buses are used and how many persons are carried. However, as already noted, samples from the 18 points in the stream indicate that these buses constitute 4.8 percent of all interstate migrant traffic and carry 25 percent of migrants traveling in stream.

Exchanges between JAR staff, work camp operators, and migrants recorded in the course of the study reveal a consensus about changes in the mode of transportation used by migrants during the years Part 398 has been in effect. It was agreed that the number of regulated vehicles has declined in the last 10 years.

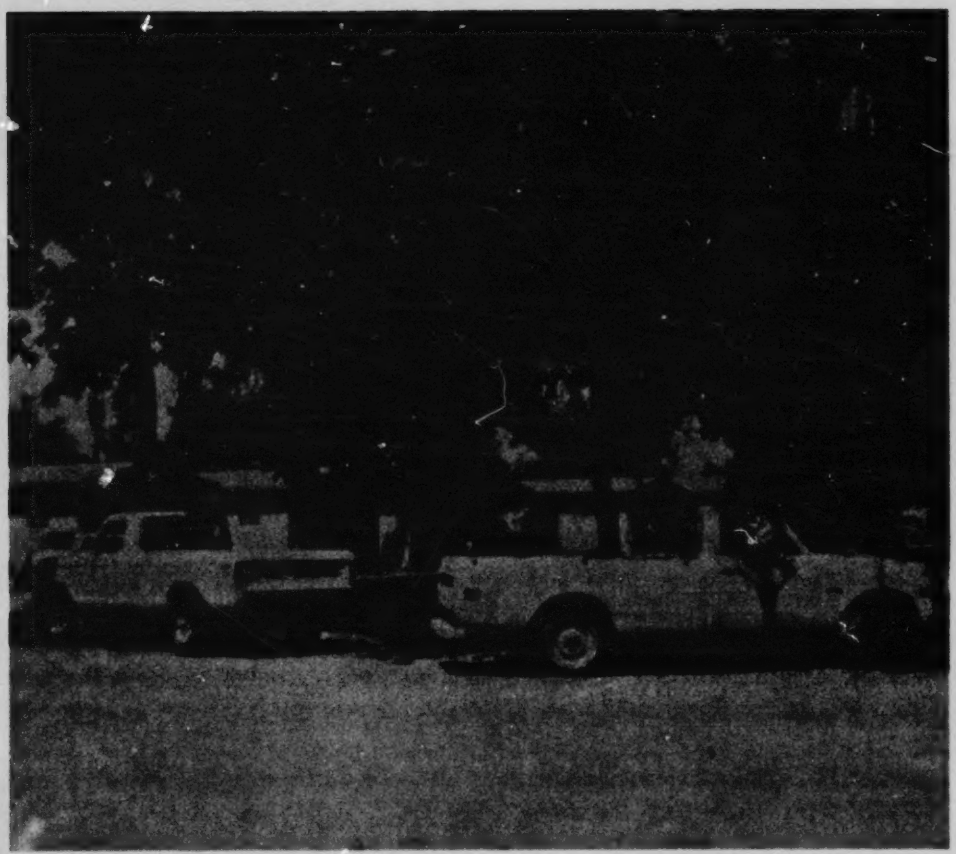
There was also a consensus on the reason for this decline: government regulations and the high cost of insurance premiums on vehicles carrying large numbers of migrating workers.

The persons citing government regulations as a causal factor here generally referred to both Federal and State regulations indiscriminately. Some mentioned the impact of the Department of Labor's mandatory contractor registration requirements. None cited Part 398 of DOT's Motor Carrier Safety Regulations in particular.

Another factor mentioned in explanations of the reduction in regulated traffic was the overall decline in the numbers of workers migrating interstate. Some respondents also noted that migrant incomes have increased in recent years, enabling increasing numbers of workers to buy and maintain their own vehicles. This may account for the large number of family owned and operated pickups and vans. These vehicles constituted 37 percent of all vehicles counted. The presence of these vehicles in these numbers was noted as a comparitively recent development by those persons to whom we spoke.

This phenomenon raises certain new questions about Part 398's applicability. Pickups, campers, and vans are not explicitly excluded from Part 398 coverage. Some of the 409 vehicles of this type encountered in the field survey clearly transport three or more unrelated persons. Therefore, it appears that Part 398 may have a growing applicability to these types of motor carriers. However, most of these vehicles that JAR encountered are family owned and operated. This raises the question of whether Part 398 applies when two or more additional passengers who are not part of the immediate family of the owner/operator travel interstate with a family group in a pickup or van.

Instances of this kind are technically within the scope of Part 398, although discussion with DOT officials indicates that Part 398 was not originally intended to cover these vehicles, which were not in common use at the time the regulation was promulgated.



PICKUP TRUCKS AT PLANADA MIGRANT HOUSING PROJECT

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The study suggests that Part 398, in its present form, has very limited applicability to migrant transportation. The study also indicates that even its limited applicability has been preempted by the laws of California, Texas, and Florida. Also, there is a great deal of overlap with the Department of Labor's Farm Labor Contractor Registration Act (FLCRA) regulations, which apply to any farm labor contractor who transports migrant laborers.

19

I. INTRODUCTION

This is the final report on a study to assess the current applicability of Part 398 of the Federal Motor Carrier Safety Regulations to the vehicles which transport migrant workers to their seasonal farm jobs in harvest areas. Part 398, which will be explained in more detail in Section II (Background), concerns safety factors affecting the vehicles used and the manner of travel.

This study spanned 15 months and included a review of both primary and secondary data sources. Preliminary conclusions were tested through field observations conducted at sample locations in the three major migrant streams. The field observations included a survey of vehicles, drivers, and passengers in 11 States. Information gathered from camp administrators, crew leaders, and State officials provided additional insight into the modes and patterns of migrant transportation. The following report represents a comprehensive assessment of our findings concerning the current applicability of Part 398 to the interstate transportation of migrants in the United States.

II. BACKGROUND

On June 18, 1957, the Interstate Commerce Commission, ICC, established the first nationwide standards governing the physical condition of vehicles carrying migrant farmworkers from State to State. These standards related to the comfort and safety of the migrant passengers and extended to the condition of the passenger compartments, driver qualifications, and the number and frequency of rest and meal stops made while such vehicles were on the road.

The origin of the new regulations can be traced to the formation of the President's Committee on Migrant Labor in August 1954.[1] This Cabinet-level committee was influential in focusing attention on many of the serious problems faced by migrant agricultural workers. On February 8, 1956, after reviewing the status of interstate migrant transportation, the President's Committee issued a report entitled, "Suggested Regulations for the Transportation of Migrant Workers by Motor Vehicles." A year later, after extended hearings on the question, the ICC issued regulations governing the transportation of migrant laborers.

The regulations were aimed at trucks and buses owned and operated by contractors or crew leaders which carried large groups of agricultural workers and their families across State lines. The decision to impose new regulations grew out of an awareness that the poor condition and unsafe operation of these vehicles endangered

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[1] This Committee consisted of the Secretaries of Labor, Agriculture, Interior, and Health, Education, and Welfare, and the Administrator of the Housing and Home Finance Agency. It was influential in the decision to extend Social Security coverage to migrant laborers in 1955.

the lives of substantial numbers of persons forced to rely on this transportation to find work. Accidents resulting in the death or serious injury of large numbers of migrant workers made recurring headlines across the nation. The problem was echoed in a growing number of articles and books describing how the dependence of migrant workers on transportation was used to exploit them economically, and otherwise control their lives.[2] Most of these accounts leave the reader with an image of docile groups of migrant agricultural laborers being herded into broken-down buses or open flat bed trucks and hauled like cattle from place to place by the labor contractors who dominated and exploited them.[3]

The ICC's action in 1957 was followed by a series of actions by both Federal and State authorities. The enactment of new Federal legislation responsive to the special needs of migrant workers was facilitated by the creation of a Senate Subcommittee on Migrant Labor in 1959. By 1961, 28 States had established migratory labor committees which provided a focal point and impetus for the passage of numerous legislative measures on the State level.[4]

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[2]For a discussion of the control over migrant lives exerted by the contractors and crew leaders who provided transportation for migrant workers, see William H. Friedland and Dorothy Nelkin, Migrant: Agricultural Workers in America's Northeast (New York: Holt, Rinehart and Winston, 1971), pp. 61-65.

[3]Friedland and Nelkin, Migrant, pp. 19-35; Dale Wright, They Harvest Despair: The Migrant Farm Worker (Boston: Beacon Press, 1965), pp. 30-46. A series of case studies written in this vein can be found in Louisa R. Shotwell, The Harvesters: The Story of the Migrant People (New York: Doubleday & Company, Inc., 1961).

[4]In 1961 only six States had passed special legislation designed to regulate vehicles transporting migrant workers and their families. Today laws of this kind have been passed in 36 States.

Among the most important results of Federal legislation were the Farm Labor Contractor Registration (FLCRA) regulations which were implemented in 1963 to protect the migrant farmworkers from abuse and exploitation. These regulations were amended in 1974 to include intra as well as interstate migration. FLCRA imposes registration requirements and requires documentation as to vehicle inspection, driver certification, and insurance or financial responsibility from:

> ...any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers (excluding members of the contractor's immediate family) for agricultural employment.[5]

Enforcement of the ICC's original regulations passed to the Department of Transportation shortly after that Department was established in 1967 and the provision of the original regulation were rewritten into Part 398 of the Federal Motor Carrier Safety Regulations.

Part 398 followed the construction and intent of the ICC Regulations. It applies to motor carriers,

> ...which transport in interstate or foreign commerce at any one time three or more migrant workers to or from their employment...for a total distance of more than 75 miles, and then only if such transportation is across the boundary of any State, the District of Columbia, or Territory of the United States, or a foreign country.[6]

Minimal criteria were established to guarantee that vehicles transporting migrants are mechanically sound. Specifications were also included to insure that passengers have sufficient space to sit and

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[5] A copy of the FLCRA Regulations are included in Appendix A.

[6] A copy of Part 398 of the Federal Motor Carrier Regulations is found in Appendix D.

be protected from the elements. Regulated vehicles were required to stop at reasonable intervals to allow passengers to eat, use rest rooms, and sleep. The vehicle's driver must be certified as physically fit by a medical doctor and carry a permit authorizing him to operate the type of vehicle being driven. The regulations also authorize DOT inspectors to put vehicles that fail to comply with the provision of Part 398 "out of service" until such time as the violations are corrected.[7]

A number of changes in recent years have raised questions concerning the present applicability of Part 398 to vehicles being used to carry migrants in interstate commerce. With the mechanization of much of the work that was traditionally performed by migrant labor, the number of migrant workers moving in interstate commerce has declined significantly.[8] The work that remains can often be performed by a relatively small crew in a much shorter amount of time.

Consequently, many migrants are now traveling as family units with wives and children working alongside of the husband out in the field. Because of this, there are indications that the contractor-owned buses and trucks, which were the object of Federal regulatory efforts initiated in 1957, are disappearing. They are being replaced by cars, station wagons, pickup trucks, and vans which are driven by the migrant families who own them.

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[7]Henceforth, in this report, vehicles whose owners have registered under FLCRA will be called "registered" vehicles, while those subject to Part 398 will be referred to as "regulated" vehicles.

[8]"Migrant Workers: A Way of Life is Fading," The Washington Post, August 20, 1978.

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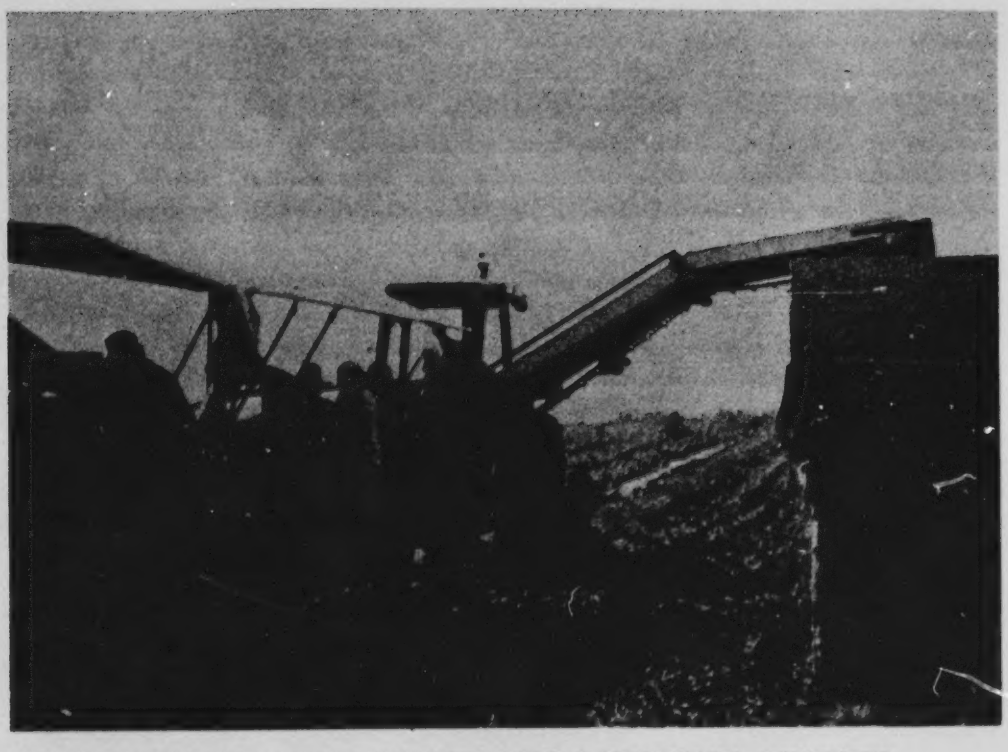

MIGRANTS IN OHIO PICKING TOMATOES WITH A MECHANICAL HARVESTER.

In addition to regulation under Part 398, vehicles and drivers transporting migrants to work destinations are subject to regulations under the Federal Labor Contractor's Act (FLCRA) and a number of State laws and regulations. The application of FLCRA is explained in Section III. The relevant statutes of the three major home base States are discussed in Section V (Current Applicability of Part 398).

III. METHODOLOGY

In April 1977, J. A. Reyes Associates (JAR) started work upon a project to research the interstate transportation of migrant farmworkers in the United States. JAR's study of the applicability of Part 398 of the Motor Carrier Safety Regulations was shaped by the fact that no one is certain how many persons regularly cross a State or national boundary in search of agricultural employment, and how many vehicles are used to carry these people to their work. In statistical terms this means that the universe of vehicles potentially subject to Part 398 regulations, and of persons using them, has not been defined. It follows that a random sample of these vehicles and users cannot be drawn.

In September 1977, the Office of Management and Budget (OMB) refused to approve the use of questionnaires or interview schedules to gather data because the results could not be applied to any definable universe of migrants or migrant vehicles. When informed of OMB's position, JAR responded by developing an alternative approach to secure and develop information pertinent to the quesiton of Part 398's applicability to the interstate flow of migrant traffic.

The study began with a thorough examination of literature on migrant transportation published from the time the first ICC regulations were passed in 1957 to the present. Published reports were supplemented by materials in official records at the Departments of Labor, Health Education and Welfare, Agriculture, and other Federal agencies. Congressional Committee and subcommittee proceedings were also consulted. Further information was gathered from independent sources such as the National Migrant Information Clearinghouse, the National Association

of Farmworker Organizations, the National Council of La Raza, and the American Trucking Association. In developing background information from these sources, extensive conversations were held with officials from the organizations contacted. Their opinions and evaluations of the significance and reliability of the information gathered were recorded.

The next step was to look for statistical data to test and supplement the descriptive information being gathered. JAR staff contacted Federal and State highway safety agencies. Records of accident reports which could be used to trace recent trends in migrant vehicle safety were sought to enable staff to compare the risks of riding in vehicles covered by Part 398 with other modes of interstate transportation. However, no useful information of this kind is available because accident records do not include the occupation of the driver.

Data collected under DOL's Farm Labor Contractor Registration Act (FLCRA) was the most comprehensive statistical information available. In order to gain access to these data, JAR met with Mr. Solomon Sugarman and Ms. Ruth Barrett from the Farm Labor Law Enforcement Branch in DOL's Wage and Hour Division on February 1977.[1] At this meeting JAR sought clearances for staff visits to DOL Regional Offices to examine

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[1] A preliminary draft of this report was discussed at another meeting with Mr. Solomon Sugarman and Ms. Ruth Barrett on September 22, 1978. Mr. James Bremner of the Federal Highway Administration was also present. The purpose of the meeting was to solicit DOL comments concerning the validity of JAR findings that there had been a significant decrease in the interstate transportation of migrants subject to regulation under Part 398. Mr. Sugarman and Ms. Barrett had no quarrel with these findings but felt that there are still large numbers of migrants who are being transported intrastate who are subject to DOL regulation.

files on contractor registrations which are maintained at these locations. Unfortunately, the Regional Offices of the DOL were too busy registering contractors to take time to prepare their files for investigation and allow our staff to proceed. Mr. Sugarman did provide the Public Registry of Farm Labor Contractors, however. He also suggested a visit to Florida where the State Bureau of Employment Services performs the DOL registration function and keeps records for that State on file.

The Public Registry contains a nationwide list of the names and locations of migrant labor contractors. It also shows which contractors are authorized to transport migrant workers. However, it does not provide information which can be obtained by examining completed FLCRA forms on file, on the number of workers carried by each of these.

Neither the register nor the files themselves indicate whether contractors transporting workers confine their operations to intrastate transportation or travel interstate as well. Therefore, it is impossible to tell from these data how many registered contractors authorized to transport workers operate vehicles covered by Part 398.

In Florida, Mr. Dan Glass of Rural Manpower Services in the State Department of Commerce opened FLCRA files to JAR's staff. Using a topical guide, JAR extracted data on the number and types of vehicles used by these contractors and how many persons they carried. (See Appendix B). Subsequent efforts to gain access to FLCRA data at DOL field offices in California and Texas, the two other major home base States for migrant workers, met with no success. In both cases, we were denied access because the files contain both registration and enforcement information, and the latter is confidential.

The FM-7-85 forms kept on file at DOL's central office provided another

source of statistical data used to develop a picture of current use of regulated vehicles. (See Appendix C). They contain information on the itineraries of contractors transporting migrant workers to destination States. The data from Florida and Texas provided a means of tracing the flow of outbound workers from these home base States through the migratory cycle. MA-7-85 forms are not used in California, so data of this kind were not available for this third major home base State.

JAR staff also sought statistical data in the records kept by State agencies in major home base and destination States. In the course of our field work in these States, information which has proven useful, although somewhat limited in scope, was secured from these sources.

JAR established working relationships with a number of State and local officials and other organizations and individuals. Among the persons contacted were officials involved in the farm labor, education, and social services programs; Title III, Section 303 of the Comprehensive Education and Training Act grantees; supervisors and operators of migrant rest stops and work camps, and local farm worker and grower associations.[2]

These contacts were used to generate a current, detailed picture of the flow of migrants from home base to destination States and back. They were also used to determine when and where high concentrations of migrant vehicles and populations could be located during the growing and harvest seasons when migrants are working their way from State to State.

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[2]A list of persons and agencies who were contacted is included in Appendix E.

Information gathered through these State level contacts served two purposes. It provided another means of testing the picture of migrant vehicle use developed from information gathered in Washington. And it laid the groundwork for the selection of representative migrant camps and rest areas from which primary data would be gathered when the study moved into the field.

The field survey became the central element of the study when it was clear that recorded information is neither an adequate nor altogether reliable means of assessing the numbers and condition of DOT regulated vehicles now on the road. Records together with the perceptions of knowledgeable individuals contribute significantly to the development of a picture of the current situation. But the data base is narrow and leaves a number of questions unanswered. Furthermore, the reliability of data on file is doubted by persons closest to it.[3]

Because this is the case, JAR designed a set of formats to record field observations, and sent research teams into the field. The purpose here was to gather information which would be used to test data from existing records and secure new primary data which would assist DOT in assessing the applicability of Part 398.

Using information on the current flow of migrant workers and families from State to State, we sent field researchers to a series of locations distributed throughout the three major streams. Points in stream were selected according to the following criteria:

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[3]For example, there are officials at the Department of Labor who believe that FLCRA data--which are the most complete data available--may identify only half of the farm labor contractors now operating in the United States.

- points which are, according to the best information available, representative of the geographical and numerical distribution of migrating populations in each stream;
- points which would yield the highest possible concentration of migrants and of vehicles used by migrants;
- points which are representative of the ethnic distribution of migrant workers; and
- points which would yield data that could be meaningfully correlated with data on record and field research done elsewhere.

After determining the times when the highest concentrations of migrants and vehicles would be present, JAR sent its field teams to the selected locations. At the sites, vehicle counts and observations were used to determine:

- the number of migrants living at or passing through each selected point in the stream,
- the number and types of vehicles used by this segment of the migrant population,
- the number and relationships of persons using vehicles potentially subject to DOT regulations, and
- the physical condition of the regulated vehicles.

This information was recorded at each site. In cases where camp records were available, data from this source were also gathered. They were used in our data analysis as a crosscheck to vehicle counts and direct observation.[4] At some locations, where records extend back over

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[4]Our site selection in the Midwest Stream is one example. The volume of traffic passing through the Hope Rest Camp in Arkansas and the fact that records of vehicle flow at this point in the stream have been kept for several years, and were available to our surveyors, made information gathered at this point the key to our understanding of the applicability of 398 in the Midwest Stream. Therefore, in order to test the representatives and reliability of this data, we selected a set of sites upstream, and collected data at these points which were used to cross-examine the data gathered at Hope.

the past few years, these data have also been used to provide some insight into changes in migrant transportation over time. Information of this kind recorded for each site forms the core of the following report of findings.

In order to generate additional information on current trends in migrant vehicle use and the impact of Part 398, JAR used what is commonly referred to as a focused interview technique. This approach was adopted because it does not violate OMB strictures on the use of formal interviews or questionnaires, while serving to structure exchanges between surveyors, camp administrators, and migrants which occurred in the course of the site visits. While examining records, counting vehicles, and observing who was using vehicles falling within the scope of DOT regulations, surveyors guided conversations to uncover answers to the following questions:

- Has there been a notable change in the numbers of regulated vehicles being used to transport migrants in recent years?
- If there has been a change, what is it? What is its nature and why has it occurred?
- Has there been any change in the physical condition of regulated vehicles in recent years?
- If there has been a change, what is its nature and why has it occurred?

Surveyors were instructed to record the impressions they gathered about these questions immediately after the conversation where they are transmitted. This firsthand knowledge from persons who have long experience working in the migrant stream has been used in the report at certain points where it can help clarify the significance of empirical data collected.

During the course of the study, our method of approach was modified to

resolve a problem which emerged during preliminary site visits. Part 398, as written, clearly does not apply to cars and station wagons. But, because the regulation uses both vehicle type and the number and relationship of persons using it as criteria for applicability, the whole spectrum of out-of-state trucks, buses, vans, and pickups counted at destination State sites falls into a potentially regulated category. In order to determine if these vehicles fall under Part 398, it is necessary to determine the number and relationship of persons riding in these vehicles. In the case of larger vehicles, trucks and buses, which camp records and direct observation confirm to be carrying large numbers of unrelated workers, Part 398 clearly applies. However, its applicability is far more uncertain, and more difficult to determine, in the case of the growing numbers of pickup trucks (often with campers attached) and vans encountered during site visits. While these vehicles are used by small groups, these groups are often not restricted to an immediate family as DOT defines this unit.[5] Therefore, by a strict interpretation of the applicability criteria established in Part 398--e.g. vehicles other than private cars and station wagons carrying three or more unrelated persons more than 75 miles and across State lines--these intermediate-sized vehicles may be subject to regulation. Detailed information on who uses them is required to make a determination.

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[5]The definition of "immediate family" used by the Federal Highway Administration comes directly from the Department of Labor's Farm Labor Contractor Registration Act. Section 40.2(f) of this act defines "immediate family" as:

(1) a spouse;
(2) children, stepchildren, and foster children;
(3) parents, stepparents, and foster parents; and
(4) brothers and sisters.

Under this definition, a pickup truck carrying an uncle, a brother-in-law, or another unrelated laborer is technically subject to regulation.

Because Part 398 is technically applicable to pickups and vans, and these vehicles now constitute a substantial portion of the traffic in stream, JAR instructed survey teams to examine available records closely to determine the relationships among persons using them. Direct observation also contributed to our understanding here. In addition the focused interview technique applied in the study was expanded to gather information on this question in informal exchanges with camp administrators and migrants.

JAR's overall approach was designed to generate as much useful information as possible, within the terms of the DOT contract, to assist DOT in assessing the current scope of Part 398's applicability to the interstate transportation of migrant workers and families. Written records, field research at representative points in the stream, observation, and the recollections and comments of migrants and others working in stream have been synthesized to yield a picture of:

- the overall flow of migrant workers and vehicles in each major stream,
- the numbers and kinds of vehicles used to transport migrants in stream,
- the numbers and types of vehicles which fall under Part 398,
- the numbers of persons now using regulated vehicles,
- changes in the flow of regulated vehicles, and in the condition of regulated vehicles, and
- the impact of Part 398 on vehicle traffic.

This information is presented in the following statement of findings. It forms the basis for a concluding statement on the impact and current applicability of Part 398 of the Motor Vehicle Safety Act.

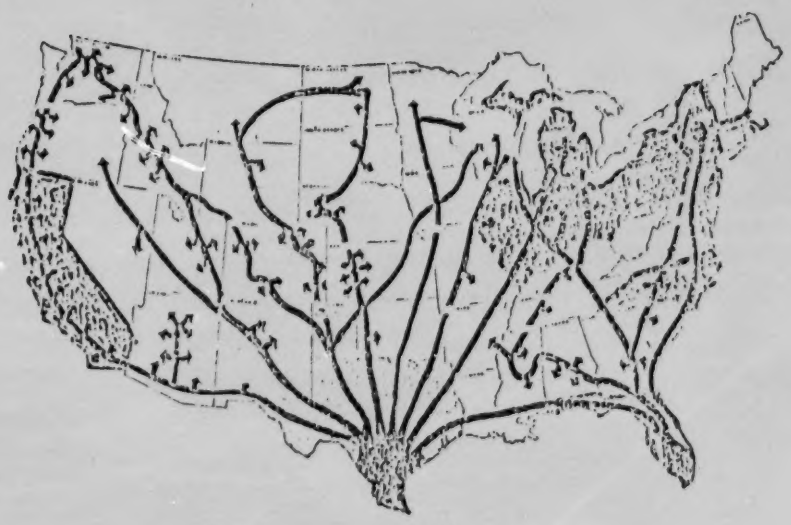
IV. FINDINGS

A. PRELIMINARY DATA AVAILABLE

The seasonal flow of migrant traffic across the continental United States follows three definable streams. The streams are not discrete; numerous cross currents cut through each of them. But the three streams remain, each with a distinct source in the three home base States of California, Texas, and Florida.

In the late spring of each new growing season, motor vehicles carrying migrant workers leave home bases and move northward: up the west coast to Washington; up the Mississippi valley to fan out in the Middle West; and up the east coast as far as Maine. In September and October, as the cold weather moves southward, the direction of the traffic flow reverses.

MIGRANT LABOR FLOW



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Information collected by the Department of Labor for 1977 shows that regions including California, Texas, and Florida are home bases for 6,910 migrant contractors. This is 91 percent of all contractors registered under the mandatory Farm Labor Contractor Registration Act (FLCRA). Among these, 2,161 contractors applied for and received authorization to use motor vehicles to transport farmworkers. They represent 95 percent of the contractors authorized to transport migrant laborers nationwide.

LOCATION OF DEPARTMENT OF LABOR REGIONAL OFFICES AND BOUNDARIES OF JURISDICTION

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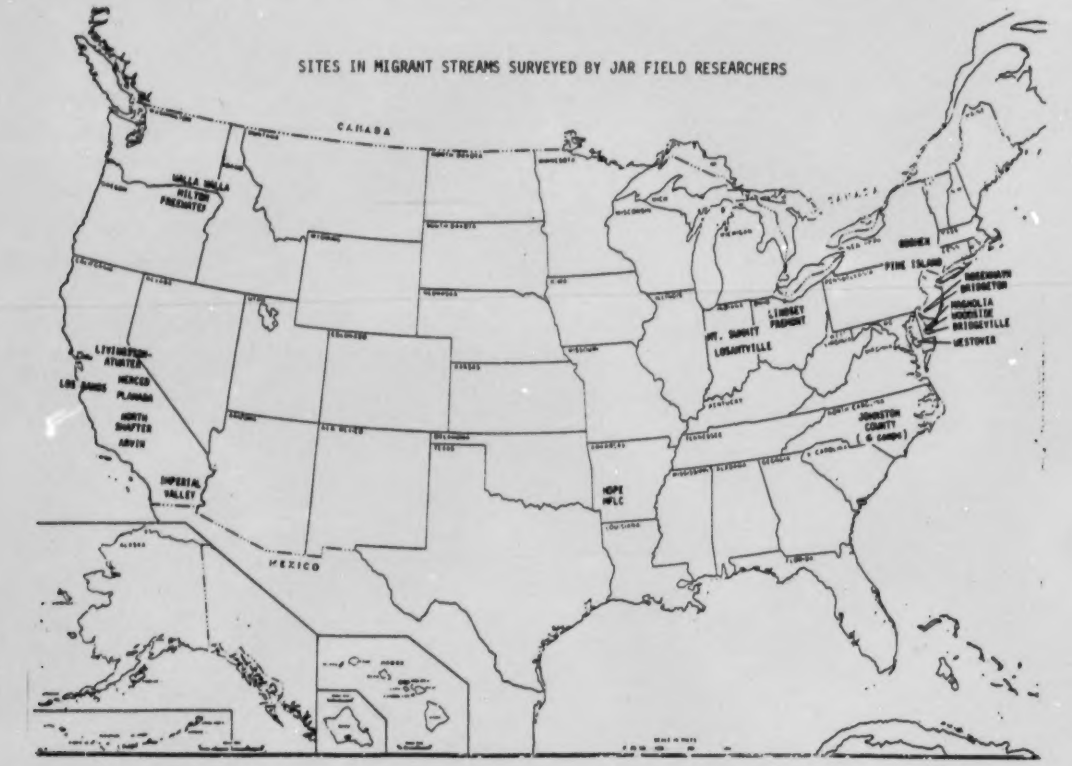
CONTRACTORS REGISTERED WITH DOL UNDER NATIONWIDE FLCRA*

REGION	TOTAL CONTRACTORS		AUTHORIZED TO TRANSPORT	
	NUMBER	%	NUMBER	% OF ALL CONTRACTORS AUTHORIZED TO TRANSPORT
I	6	0%	0	0.0%
II	115	2%	52	2.0%
III	89	1%	37	1.6%
IV (includes FL)	3,468	46%	1,435	63.2%
V	99	2%	3	.1%
VI (includes TX)	2,578	34%	620	27.0%
VII	20	0%	1	--
VIII	78	1%	6	.2%
IX (includes CA)	864	11%	106	4.6%
X	207	3%	10	.4%
TOTAL	7,524	100%	2,270	100.0%

* Source: Public Registry of Farm Labor Contractors, 1977

Despite serious questions concerning their overall validity, these data make it clear that a study of the applicability of Part 398 must examine contractor operations at the three major home base States. There are questions about how many vehicles are used by contractors authorized to transport workers and how many persons they carry. Even more important to this study is information on which contractor-owned vehicles carry workers intrastate, and how many travel interstate and therefore fall within the scope of Part 398.

The following statement of findings provides the best information available on these questions. Data on record are both tested and supplemented by data drawn from 32 points in destination States surveyed this summer.



Data on 1,102 vehicles carrying 5,486 migrant workers were gathered at these locations by JAR field survey teams.

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B. THE WESTERN STREAM

The migration of agricultural workers in the Western Stream begins in early April. Each year, thousands of migrant farmworkers leave their homes in Texas, Arizona, and Mexico to go to California and work on the crops. Once there, they join with a far greater number of California-based workers to plant and harvest crops in that State. Most interstate workers are employed in the San Joaquin Valley. However, a substantial number of the farmworkers travel on to Oregon and Washington to work on the harvests there. In September and October the flow reverses and the migrants travel southward along the west coast back to their home base States.

Available background material indicates that farm labor transportation has been a serious problem on the west coast. Accounts of terrible accidents involving migrant vehicles traveling in California have persisted into the early 1970's. An account of migrant transportation in California in The Nation Magazine in February 1974 conveys the following picture:

> Fatalities are an inevitable part of the migrant labor pattern. Most of the trucks are decrepit, mechanically hazardous....many of the vehicles are not meant to carry passengers. The driver is usually a labor contractor, possibly in default on payments for the vehicle and skidding around on back roads to keep ahead of the sheriff.

There is a limited amount of published data dealing with the patterns and modes of transportation used by the migrant worker on the west coast. Because of this, JAR's study of the current applicability of Part 398 of the Motor Carrier Safety Regulations centered upon data maintained by the Department of Labor, State Rural Manpower Reports, and site visits to migrant camps in California, Oregon, and Washington. We also traveled through the Imperial Valley and counted migrants and

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[1] "Manslaughter by Truck," Nation 218: 165-6 February 9, 1974.

vehicles crossing into California from Mexico to Calexico. During these site visits JAR conducted vehicle counts, examined vehicle registration records at certain camps, and talked informally with camp administrat , State officials, and migrant workers.

The data which JAR has collected are organized into three sections which discuss:

- the flow of migrant workers and vehicles,
- the types of vehicles in the interstate flow, and
- the migrant passengers themselves.

Following this scheme the narrative moves by a process of elimination from a general view of the interstate flow of migrant workers and vehicles to arrive at conclusions concerning which vehicles by type are subject to regulation, and which among this group are, according to their use, regulated vehicles.

1. Flow of Migrant Labor

The Western Stream presents a unique situation in terms of the flow of migrant labor because California serves as a principal source State for migrants in the Western Stream, as well as a receiver State. Because of the State's size, its long growing season, and the variety of crops it produces, many laborers never leave California. Since Part 398 applies only to migrant transportation across the boundary line of a State or foreign country, laborers who move only within State boundaries are not covered by Part 398.

a. California

Agricultural employment estimates compiled by the State Employment Development Department in 1977 indicate that in an average month approximately 11,300 out-of-state migrants work in California. They constitute 10 percent of the entire agricultural labor force.

BREAKDOWN OF SEASONAL FARMWORKERS IN CALIFORNIA (1977)				
SEASONAL WORKERS	NUMBER (PEAK MONTH SEPTEMBER)	PERCENT	NUMBER (AVERAGE PER MONTH)	PERCENT
LOCAL	141,700	72%	89,900	76%
INTRASTATE	33,300	17%	17,100	14%
INTERSTATE	20,600	11%	11,300	10%
TOTAL	195,600	100%	118,300	100%

According to FLCRA registration data for 1977, only 12 percent of the 864 contractors registered in Region IX (which includes California and Arizona) are authorized to transport workers.[2] Since DOL received no form MA 7-85 data from California in 1977, it is not possible to use this source to help determine the number of authorized carriers in California who take crews out of state. Early indications from our initial contacts in the State were that workers operated solely within the State. In an effort to shed light on this question, JAR staff spoke with 12 contractors operating in California's Imperial and San Joaquin Valleys who are authorized to transport workers. All stated that they did not leave California with their crews in 1977. Most worked exclusively in the valleys where they are located. (See Appendix F)

In February 1978 JAR visited the Imperial Valley in South California to verify whether or not the contractors in the area carry migrants

[2] Informed sources estimated that these data may identify only half of the contractors operating in the area.

interstate. There are no labor camps in the area because most of the migrant workers in the Imperial Valley are from Mexico and return home each night. JAR observations at the most frequently used border crossing in the area confirmed that large numbers of these "Green Carders" (legal aliens) walk across the U.S.-Mexico border each day from their homes in Mexicali to Calexico, California. They are then picked up in buses provided by contractors operating in the Imperial Valley. While these vehicles transport migrants to and from their work, they are not covered by Part 398 because no State or national boundaries are crossed by the vehicles. These observations were confirmed in conversations with the California Highway Patrol and with Adalberto Ramirez, Director of Campesinos Unidos, Inc. in Brawley. Campesinos Unidos is a grantee under Title III, Section 303 of the Comprehensive Employment and Training Act (CETA), which provides labor placement and educational services for migrants in the Imperial Valley.

As there appeared to be very little interstate transportation of migrant workers in the Imperial Valley, JAR shifted its field study northward in July 1978 to the San Joaquin Valley. Six migrant housing projects sponsored by the State of California were worked in this area. The North Shafter Migrant Camp and the Arvin Migrant Camp are located in the southernmost part of the San Joaquin Valley, near Bakersfield. The remaining four camps (Livingston-Atwater, Merced, Planada, and Los Banos) are located farther north in the San Joaquin Valley about 150 miles east of San Francisco.

The Migrant Services Section of the State Employment Development Department runs 26 such housing projects which provide housing for temporary occupancy at reasonable costs for migrant farmworkers and their families. In 1977, the Migrant Services Section provided housing for 2,360 families.

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HOUSING UNIT AT LOS BANOS FARM LABOR CAMP

JAR chose migrant camps which afforded a high concentration of migrant vehicles. There are also records maintained which provide statistical profiles of the migrants who stay in the camps each year. The camps rent almost exclusively to families. Ninety-eight percent of those families are Hispanic, and the average family size is 5.2 persons. The camps resemble well-kept apartment complexes with areas set aside for nurseries and schools where children can be cared for while their parents are working in the fields.

The flow of migrants who do move interstate can be related to a home base State, where a migrant family lives during the winter months. Data collected by the Migrant Services Section of the California Employment Development Department breaks down the migrant workers in each of the 26 State camps by number of home base States. Texas, Mexico, and Arizona are the principal feeder States into California. Together they account for more then 72 percent of the interstate migrant families.

FAMILY HOME BASE BY MIGRANT HOUSING CENTER
JANUARY 1977 - DECEMBER 1977

MIGRANT HOUSING CENTER	TOTAL	Arizona	California	Oklahoma	Texas	Other Western States	Other States	Mexico	Not Stated Unknown
TOTAL ALL CENTERS	2,360	147	575	2	622	26	27	940	21
PERCENT %	100.0%	6.2%	24.4%	.1%	26.4%	1.1%	1.1%	39.8%	.9%
1. Newell	25	0	12	1	9	3	0	0	0
2. Williams	111	1	50	0	30	1	5	23	1
3. Parlier	135	1	3	0	92	0	0	39	0
4. Raisin City	117	6	24	0	48	4	4	29	2
5. Shafter	161	0	20	0	59	1	0	80	1
6. Livingston	51	1	20	0	4	0	0	23	3
7. Los Banos	91	28	19	0	33	1	1	8	1
8. Merced	64	3	21	1	17	0	0	22	0
9. Planada	97	7	20	0	6	1	7	54	2
10. Turlock	49	0	9	0	9	0	0	31	0
11. King City	83	13	24	0	11	1	0	33	1
12. Hollister	94	7	54	0	14	3	2	13	1
13. Harney Lane	133	8	57	0	18	3	1	46	0
14. Mathews Rd. 2	128	11	42	0	15	0	1	57	2
15. Mathews Rd. 3	106	2	5	0	7	1	0	91	0
16. Gilroy	114	10	34	0	56	0	1	10	3
17. Watonsonville	121	7	10	0	3	0	0	100	1
18. Dixon	127	6	20	0	18	0	0	82	1
19. Empire	89	0	15	0	7	0	0	67	0
20. Westley	61	18	12	0	17	3	4	6	1
21. Patterson	37	0	6	0	17	1	0	13	0
22. Yuba City	93	6	41	0	14	2	1	28	1
23. Madison	105	10	48	0	21	1	0	25	0
24. Davis	79	3	5	0	26	0	0	45	0
25. Arvin	141	2	20	0	84	0	0	35	0

Total all centers counts represent statewide totals and do not necessarily equal the sum of the center counts.

During our site visits to six of these migrant housing projects we conducted vehicle counts. The State of licensing was used as an indicator of the vehicle's home base. The following table represents the breakdown by State of origin of all of the vehicles counted at the six camps.

STATE OF ORIGIN OF VEHICLES COUNTED
BY JAR AT SIX CAMPS IN CALIFORNIA

STATE OF LICENSING	Arvin Migrant Farm Labor Camp (100 units)	North Shafter Migrant Farm Labor Camp (100 units)	Los Banos Migrant Farm Labor Camp (78 units)	Atwater-Livingston Migrant Farm Labor Camp (50 units)	Planada Migrant Farm Labor Camp (94 units)	Merced Migrant Farm Labor Camp (54 units)	TOTAL	PERCENT OF TOTAL
California	56	72	17	30	57	26	258	65%
Texas	39	41	13		6	7	106	27%
Arizona			17		8		25	6%
Mexico			1		1		2	.5%
Oregon						1	1	
Indiana	1	1					2	
Nebraska		1					1	
Montana			1				1	
Washington						1	1	
Florida			1				1	

The July 1978 vehicle count conducted by JAR differs somewhat from the aggregate data for 1977 concerning family home base State collected by the State Migrant Services Section. Sixty-five percent of the vehicles that JAR counted were registered in California. This compares with only 24.4 percent of the families who listed California as their home base in the 1977 Migrant Services Report. A similar disparity existed between JAR data for cars registered in Mexico (.5 percent) and the 1977 Migrant Services figures for families who came from Mexico (39.8 percent).

There are several possible explanations for this disparity. JAR data were collected at only six camps while the Migrant Services figures represent all 26 housing centers. In addition, JAR data were collected over a period of two days while the Migrant Services figures represent aggregate figures for all of 1977. We do not know how the Migrant Services Section determined a family's home base. JAR used the State of licensing as an indicator of family home base. It is possible that many Mexicans who come to work in California buy or register their cars in California. Thus, the State of licensing might in some instances be different from a family's home base. A final possibility is simply that a change in the point of origin has occurred between 1977 and 1978.

Whatever the reasons for the disparity, it is important to note that the vehicle counts conducted by JAR were not designed to be statistically valid samples. They are simply observations, and as such, can be used as supportive evidence.

JAR data agree with the Migrant Services data concerning the principal home base States of migrants who work in California. The three main feeder States of interstate migration into California are Texas, Arizona, and Mexico.

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VEHICLES AT ARVIN FARM LABOR CENTER

THE TIN SHACK ON THE RIGHT IS THE ONLY BUILDING WHICH REMAINS FROM THE 1930'S, WHEN JOHN STEINBECK VISITED THE CAMP.

b. Oregon

The Annual Rural Manpower Report which is prepared by the Employment Division of the Oregon Department of Human Resources estimates that in the peak month of 1977, 8,725 incoming migrant laborers made up 25 percent of the seasonal work force employed in Oregon.

BREAKDOWN OF SEASONAL FARMWORKERS IN OREGON (1977)				
SEASONAL WORKERS	NUMBER (PEAK MONTH JUNE)	PERCENT	NUMBER (AVERAGE PER MONTH)	PERCENT
LOCAL	24,160	68%	12,125	73%
INTRASTATE	2,675	7%	1,186	7%
INTERSTATE	8,725	25%	3,363	20%
TOTAL	35,560	100%	16,674	100%

The same report estimates the origin of the migrants who come into Oregon from other States in 1977. According to that report, the principal feeder States are California, Washington, Texas, and Arizona.

ESTIMATES OF INTERSTATE MIGRANT ORIGIN FROM REGIONAL REPORTS	
STATE OR REGION	PERCENT
California	26%
Washington	20
Midwest (Idaho, Montana, Nevada, Oklahoma)	19
Texas	18
Arizona	13
East	4
TOTAL	100%

In Oregon, JAR visited the Milton Freewater Migrant Camp in the north-eastern corner of Oregon, near Pendleton. It is owned by Orchard Homes, Inc. The Milton Freewater Migrant Camp maintains excellent registration records of all the vehicles that have come to the camp since 1970. Among the information recorded in these records is the vehicle's State of origin. In order to assess variations over the last seven years, JAR extracted data on record for 1970, 1974, and 1977. The data suggest a high degree of continuity in the influx of out-of-state migrant traffic, and in the home base States of these migrant vehicles.

HOME BASE STATES OF VEHICLES COMING TO THE MILTON FREEWATER MIGRANT CAMP

STATE	1970	1974	1977
Oregon	99	58	44
California	92	106	102
Washington	41	50	41
Texas	35	39	53
Arizona	25	15	7
Mexico	--	2	21
Oklahoma	7	7	2
Idaho	7	20	13
Florida	--	9	1
Kansas	2	1	2
Colorado	2	1	1
Arkansas	3	8	--
Other	30	7	1

As was indicated in the 1977 Rural Manpower Report, the data collected at Milton Freewater show that the principal feeder States of migrants coming into Oregon are California, Texas, Washington, and Arizona. In 1977, approximately 83 percent of the interstate migrants staying at Milton Freewater originated in those four states.

c. Washington

The Washington State Employment Security Department's Rural Manpower Report for 1976 estimates of interstate workers coming into the State are similar to those found in Oregon. Seventeen percent of the total number of seasonal workers who harvest crops in Washington during its peak season come from out of the State.

BREAKDOWN OF SEASONAL FARMWORKERS IN WASHINGTON (1977)

SEASONAL WORKERS	NUMBER (PEAK MONTH JULY)	PERCENT	NUMBER (AVERAGE PER MONTH)	PERCENT
LOCAL	41,213	77%	13,664	68%
INTRASTATE	3,356	6%	1,738	8%
INTERSTATE	9,212	17%	4,744	24%
TOTAL	53,781	100%	20,145	100%

The State of Washington does not maintain data on the home base States of migrant farmworkers. In conversation with JAR staff, officials from the Employment Security Department indicated that approximately 65 percent of the out-of-state workers are Hispanic, and the majority of them come from Texas.

In Washington, JAR visited the Walla Walla Migrant Camp located in the Yakima Valley. The camp has facilities for 124 migrant families. In examining the records kept at the Walla Walla Camp, JAR found that they were not as complete as the records maintained at Milton Freewater. The records contained complete data on the home base States of interstate migrants for the years 1977 and 1978 (through July) only.

HOME BASE STATES OF VEHICLES COMING TO THE WALLA WALLA MIGRANT CAMP

STATE	1977	1978 (through July)
Washington	20	31
Texas	30	39
Oregon	13	31
California	12	22
Arizona	4	6
Mexico	3	2
Oklahoma	2	1
Idaho	2	9
Florida	1	--
West Virginia	1	--
Nevada	1	--
Wisconsin	--	2
Missouri	--	1

The principal home base States of interstate migrants coming to the Walla Walla Migrant Camp are Texas, Oregon (which is only a few miles away), California, and Arizona.

2. Types of Vehicles

a. California

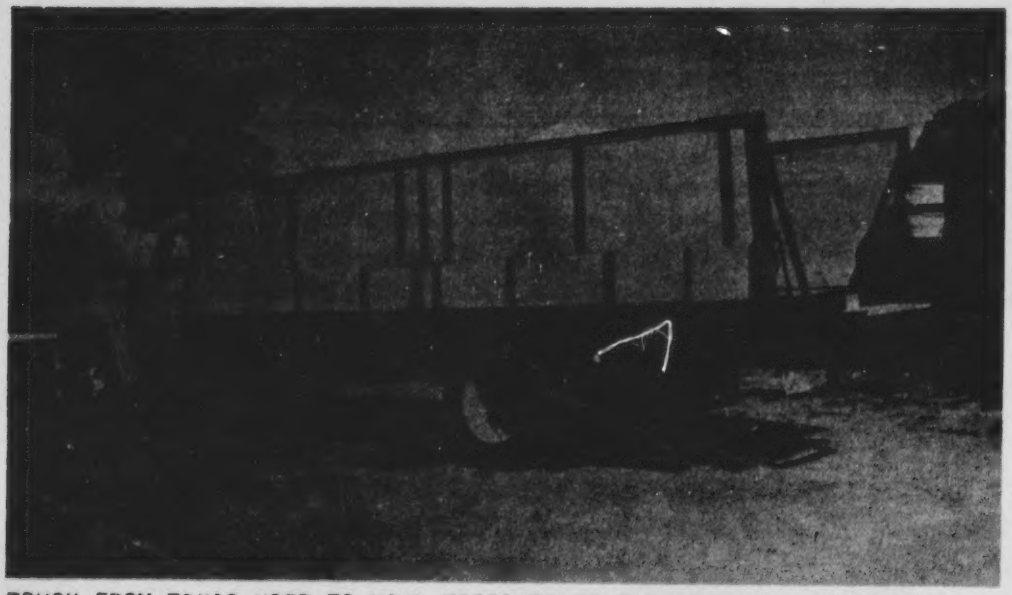
During the vehicle counts which JAR conducted at six migrant camps in California, vehicle type was noted. Care was taken to schedule the site visits at times when the number of vehicles in the camp would be at a maximum. Four of the camps were visited on Sunday, the one day out of the week when the migrants do not work. The remaining two vehicle counts were performed between 4:30 and 6:00 p.m., as the workers were returning from the fields.

The following table represents the results of those vehicle counts:

TYPES OF VEHICLES COUNTED AT SIX MIGRANT CAMPS IN CALIFORNIA

TYPE OF VEHICLE	Arvin Migrant Camp (100 units)	North Shafter Migrant Camp (100 units)	Los Banos Migrant Camp (78 units)	Atwater-Livingston Migrant Camp (50 units)	Planada Migrant Camp (94 units)	Merced Migrant Camp (54 units)	TOTAL	PERCENT
Cars	26	42	22	20	46	24	180	45%
Station Wagons	8	14	7	3	4	2	38	10%
Pickups	60	54	17	7	20	9	167	42%
Vans	2	3	3		1		9	2%
Trucks (flatbed)		2	1				3	1%
Buses	0	0	0	0	0	0	0	0

Cars and station wagons, which are exempt from the requirements of Part 398 [398.1(b)] make up 55 percent of the vehicles which JAR counted. Another 42 percent of the vehicles counted were pickup trucks. As discussed above in Section II (Background), pickup trucks are probably outside of the original intent of the regulation, although under a strict interpretation of Part 398 they may be covered. A similar argument can be made against regulating vans which are used by a migrant family as their primary vehicles. If pickup trucks and vans are considered outside of the scope of Part 398, then 99 percent of the vehicles which JAR observed in California were not subject to the regulation.



TRUCK FROM TEXAS USED TO HAUL MIGRANTS TO THE FIELDS -- NOTE WATER TANK ON THE BACK OF THE TRUCK.

The three trucks observed were flatbed trucks used to haul laborers out to the fields. They were <u>not</u> used to haul unrelated migrants across State lines. JAR field staff talked to the owner of one of these flatbed trucks. This man was from Texas. He had used the truck to

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haul his family and personal belongings to California. Once at the camp, he was using the truck to take his fellow laborers out to the field each morning, and then bring back a truckload of melons each evening. The truck was equipped with a water tank on the back to furnish drinking water while the men were in the fields. Its owner said that although his father had hauled migrants interstate about ten years ago, it was no longer profitable to do so because of the insurance requirements of FLCRA. He felt that these insurance requirements had driven many people out of the business of hauling migrants.

b. Oregon

Most of the migrants at the Milton Freewater Camp came in private cars or pickup trucks. The following data for the years 1970, 1974, and 1977 indicate the number of vehicles, by type, that were registered at the camp.

TYPES OF VEHICLES REGISTERED AT MILTON FREEWATER MIGRANT CAMP

TYPE OF VEHICLE	1970	1974	1977
Cars	179	154	136
Station Wagons	74	35	28
Pickups	49	82	58
Vans	1	4	3
Campers	4	--	1
Other*	59	58	69

*Includes walk-ons, but also includes those people who did not register any type of vehicle.

There was no evidence in the records of large trucks or buses being used to bring migrants to Milton Freewater. This was verified by the camp administrator, Ms. Geneva Ransom. She could remember only one

isolated instance, several years ago, when a farmer from the State of Washington (which is only a few miles away) brought a school bus to the Milton Freewater Camp and took all of the men from one section of the camp back up into Washington to pick asparagus. This is the only instance that anyone remembers seeing either a large truck or bus being used to haul migrants.

c. Washington

As in California and Oregon, most of the migrants who came to stay at the Walla Walla Migrant Camp traveled in private cars or pickup trucks. The following table represents the number of each type of vehicle registered at the camp during 1977 and 1978.

TYPES OF VEHICLES REGISTERED AT WALLA WALLA MIGRANT CAMP

TYPE OF VEHICLE	1977	1978
Cars	53	103
Station Wagons	8	17
Pickups	27	37
Vans	--	4
Other	22	44

There were no trucks or buses present and the camp manager could remember only two instances where, because of a labor shortage, the big growers in the area had brought in a large group of farm workers by bus. However, both times the growers used Greyhound buses and therefore came under the exception in Part 398 or common carriers [398.1(b)] but were subject to Parts 390 through 397 of the Federal Motor Carrier Safety Regulations.

3. Migrant Passengers

Data collected by JAR in the Western Stream support the contention that most migrants are traveling in family units.

In California, the camp records did not refer to the number or relationship of the people traveling in one vehicle to a particular camp. However, in-depth discussions with State officials, camp administrators, and migrant workers confirmed that most migrants travel in family units.

At the Milton Freewater Migrant Camp in Oregon and at the Walla Walla Migrant Camp in Washington there was information regarding the number and relationship of migrants who registered into any particular unit. JAR categorized the information into three groups -- migrants traveling in parties of less than five persons, migrants traveling in parties of six to 10 persons, and migrants traveling in parties of 11 to 15 persons. The following table reduces the data concerning group size for the years 1970, 1974, and 1977 at the Milton Freewater Camp:

NUMBER OF PERSONS RIDING IN VEHICLES COMING TO THE MILTON FREEWATER MIGRANT CAMP

NUMBER IN PARTY	1970	1974	1977
1-5	281	284	232
6-10	57	45	56
11-15	4	1	4

The data collected at the Walla Walla Migrant Camp in 1977 and 1978 is very similar.

NUMBER OF PERSONS RIDING IN VEHICLES
COMING TO THE WALLA WALLA MIGRANT CAMP

NUMBER IN PARTY	1977	1978
1-5	63	117
6-10	45	69
11-15	1	--

The data support the observations and resulting conclusion that practically all of the migrants travel in small, family units.

The registration cards contained further information which was particularly valuable because it enabled JAR to reconstruct whether a particular group of migrants were related, and further, whether they came within the definition of immediate family. For the years 1970, 1974, and 1977, JAR discovered 29 instances at the Milton Freewater Camp which involved the transportation by truck of three or more unrelated migrants, more than 75 miles, and across State lines. In each case Part 398 is technically applicable. Without exception, these 29 instances involved pickup trucks. For example, in 1977, a pickup truck from Idaho registered at Milton Freewater which was carrying two couples. Another pickup from California registered carrying nine people with different last names. Still another pickup from Texas had brought four unrelated men to Milton Freewater.

At the Walla Walla Camp there were only 10 instances of possible coverage for the years 1977 and 1978. Nine of these instances involved pickup trucks and one instance involved a van. For example, in 1977, a pickup truck from Texas registered at Walla Walla with eight people with different last names. In 1978, a van with eight people from California registered at Walla Walla. Again there were different last names on the registration cards.

These examples are offered as illustrations of the apparent limited applicability of Part 398 to migrant transportation in Oregon and Washington.

4. Summary of Findings

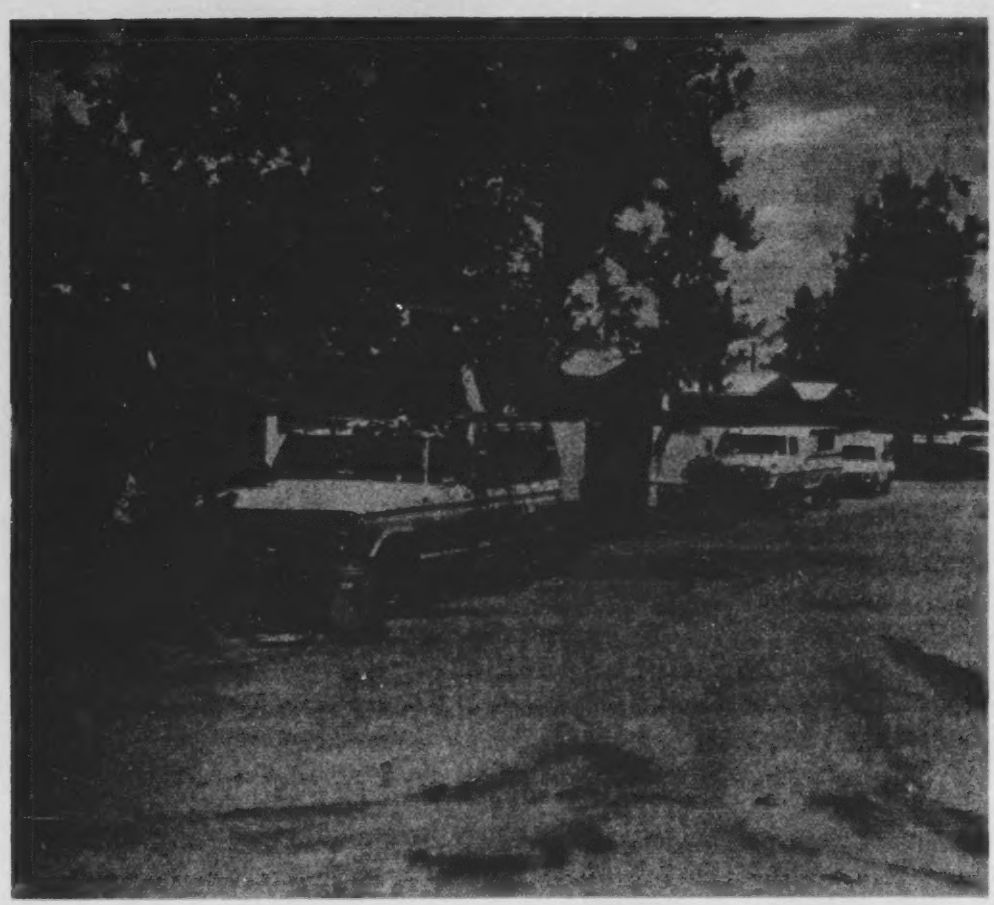
Our findings support the conclusion that Part 398 of the Federal Motor Carrier Safety Regulations has virtually no applicability to the interstate transportation of migrant farmworkers in the Western Stream.

Data presented earlier indicate that only a small percentage of the migrants in the Western Stream cross over State lines (California 10 percent, Oregon 20 percent, and Washington 20 percent). The remaining migrants, who travel only intrastate, are not subject to regulation under Part 398.

Of those migrants who do travel interstate, a much smaller, though indeterminate, number travel in vehicles which are subject to regulation. More then half of the vehicles that appeared in camp records were either cars or station wagons and therefore exempt under Part 398. Of the 235 vehicles which passed through the Milton Freewater Camp in Oregon in 1977, 164 were cars and station wagons. And of the 205 vehicles which had registered at the Walla Walla Camp in Washington through July of 1978, 120 vehicles fell into this unregulated category. When JAR counted vehicles at six camps in California, we found the same configuration. Of 397 vehicles which were observed, 218 were either automobiles or station wagons.

Considering only vehicles potentially subject to regulation, pickup trucks and vans were the predominate mode of transportation. Of the 397 vehicles observed in California, 178 were pickup trucks and vans. This pattern was repeated in both Oregon and Washington. Furthermore, most of these pickup trucks and vans are exempt from coverage by virtue of the exception created in Part 398.1(b) for the migrant worker who is only transporting members of his immediate family.

Since no large trucks or buses were observed that were subject to regulation under Part 398, the remaining pickup trucks and vans which were carrying migrants who were NOT members of the driver's immediate family represent the only cases observed by JAR where Part 398 of the Motor Carrier Safety Regulations is technically applicable. This is a very limited and somewhat questionable application.



MIGRANT VEHICLES AT THE NORTH SHAFTER MIGRANT FARM LABOR CENTER

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C. THE MIDWESTERN STREAM

The State of Texas today has an estimated migrant farmworker population of 275,000. It is the largest source of migrant farmworkers in the Midwestern Migrant Stream. The State provides migrant farmworkers for some 24 user States stretching from the west coast across the Midwest to a few States on the east coast.

Because of the large numbers of people involved and because of the social and economic ramifications of their migratory lifestyle, migrant farmworkers have been the focus of intense interest in Texas for many years. Resulting reports provide some historical perspective to our investigation. In 1965, the Texas Legislative Council issued a report on migrant transportation. This report states, "Most of the domestic migrants with home bases in Texas travel...by truck, although an increasing number are traveling by automobile in recent years."[1] Noting that these trucks are not designed for carrying passengers, the report goes on to quote from the President's Commission on Migratory Labor: "'In the ordinary sense of the word, they (migrants) do not travel; most of them are hauled.'"[2] This report expresses serious concern for the safety and comfort of farm laborers who are transported by trucks under the control of the crew leaders.

Data gathered by JAR indicates that the trend toward greater use of private vehicles noted by the Texas Legislative Council in 1965 has continued. The large trucks and buses which were used to transport

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[1] Transportation of Migrant Labor in Texas: A Report to the 55th Legislature. Texas Legislative Council, Austin, Texas. December 1965, No. 54-4, p. 37.

[2] Ibid.

migrant laborers in the 1950's, when the ICC first issued regulations, have been replaced by private automobiles or pickup trucks used by migrants traveling in family units.

MIGRANT VEHICLES AT HOPE MFLC

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1. Flow of Migrant Labor

a. Home Base Data - Texas

Texas is the principal feeder State of migrant labor into the Mid-western Stream. Our research began with an examination of Texas State records and FLCRA data for DOL Region VI which includes Texas, New Mexico, Oklahoma, Arkansas, and Louisiana. Nearly all the farm labor contractors registered in Region VI are from Texas.

There were 2,578 contractors registered in Region VI in 1977. However, only 24 percent of these 2,578 contractors were authorized to transport workers. It is impossible on the basis of these data to determine how many of these 620 authorized contractors transported migrant farm-workers across State boundaries, thereby becoming subject to the interstate transportation regulations of Part 398.

A review of DOL Manpower Administration MA 7-85 forms filed in 1977 provides evidence on the flow of vehicles out of Texas last year. These data indicate that only nine percent of the contractors leaving Texas to work in other States provided transportation for crews.[3] However, it should be noted that crews working for these contractors represent 25 percent of the persons working for contractors who filed in Region VI.

[3]Data here are based on a 75 percent sample of forms on file.

CONTRACTORS LEAVING TEXAS TO WORK IN OTHER STATES

	CONTRACTORS Number	CONTRACTORS Percent	PEOPLE INVOLVED Number	PEOPLE INVOLVED Percent
Not transporting workers	232	91%	2341	75%
Transporting crews*	22	9%	787	25%
TOTAL	254	100%	3128	100%

*Average crew size: 36

Form MA 7-85 data also indicate that 80 percent of migrant traffic leaving Texas goes to midwestern States. Of the remainder, 10 percent travel east (primarily to Florida) and 10 percent go west to California, Oregon, and Washington.

ITINERARY OF CONTRACTORS LEAVING TEXAS

	NUMBER	PERCENT
MIDWESTERN STATES	265	80%
Minnesota	105	
Wisconsin	53	
Illinois	48	
Ohio	20	
North Dakota	17	
Other States	22	
EASTERN STATES	32	10%
WESTERN STATES	32	10%
TOTAL	329*	100%

*53 crews to go to more than one State.

Information compiled by the Texas Governor's Office of Migrant Affairs (GOMA) in 1976 reveals a somewhat different pattern of movement. GOMA records indicate that 42 percent of migrant workers leaving Texas moved to the Midwest. They show 28 percent entering the Western Stream, and only eight percent working in Florida.

In addition to the review of Forms MA 7-85, JAR staff talked with 12 contractors in the Rio Grande Valley who are authorized to transport farmworkers. All but one operated exclusively within the State of Texas. The consensus among this sample was that nearly all contractors who file with DOL for authorization to provide transportation remain within the State.[4]

b. Hope, Arkansas Migrant Farm Labor Center

The Migrant Farm Labor Center at Hope, Arkansas provided a focal point for the collection of data in the Midwestern Stream. The Center is operated by the Arkansas Employment Security Division and serves over 40,000 migrants each year. (An estimated 15 percent of Texas-based migrants stop at the rest camp on their way northward in the spring.)

For the past 17 years the Center has been open from March 1 to December 1, 24 hours a day, seven days a week. It provides employment services, information on crop conditions throughout the midwestern States, sleeping quarters, rest rooms, showers, cooking and eating areas, and laundry facilities. The Center maintains detailed records on the flow of migrant vehicles which stop there. Each migrant group entering is required to register at the administrative office where the following information is logged: social security number, number of vehicles in the group, number of people in the group, breakdown

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[4] A list of the contractors contacted is included in Appendix G.

of vehicles by type, home addresses of registrants, their destinations, and when they intend to return to home base.

Because of the importance of data maintained at the Center, JAR scheduled two visits to Hope, Arkansas. The first visit was scheduled in October of 1977, when the migrant farmworkers were returning to their home base States (primarily Texas). This visit provided JAR with excellent primary data on the numbers of migrant farmworkers stopping at Hope, their travel patterns, and the vehicles used to transport them. Data were gathered by means of a 72-hour period of observation and through informal conversations with crew leaders, drivers, and passengers of migrant vehicles.

During the 72-hour observation period, JAR counted 765 people stopping at the Migrant Farm Labor Center. All of these people had been working in the Midwest: nine percent had also made a working stop in Florida. All were on their way back to Texas.

TRAVEL PATTERN OF 765 PEOPLE AT THE MIGRANT FARM LABOR CENTER AT HOPE, ARKANSAS--72 HOUR PERIOD, 1977

STATE OF WORK	NUMBER OF PERSONS	PER CENT
Michigan	78	10%
Indiana	137	18%
Ohio	286	37%
Wisconsin	22	3%
Two or more Midwestern States	178	23%
One Midwestern State and Florida	64	9%
TOTAL	765	100%

From June 22 to June 24, 1978, JAR surveyors, accompanied by an FHWA official, revisited the Migrant Farm Labor Center in Hope. JAR returned to the rest stop to witness the northward flow of migrants and to conduct a more thorough review of the records maintained at the Center.

These records provide especially valuable data because they contain information dating back to the year 1974. These data enabled JAR to identify trends in the flow of migrant labor in the Midwestern Stream. Graphs were prepared which reflect the numbers of migrant farmworkers who stopped at the Center each year since 1974. The graphs show that the peak months of migrant travel are June (for northbound traffic) and September and October (for southbound traffic). These peaks have been steadily decreasing each year. In 1974, the June peak totaled 3,834 migrants. This number had decreased to only 2,300 in 1978.

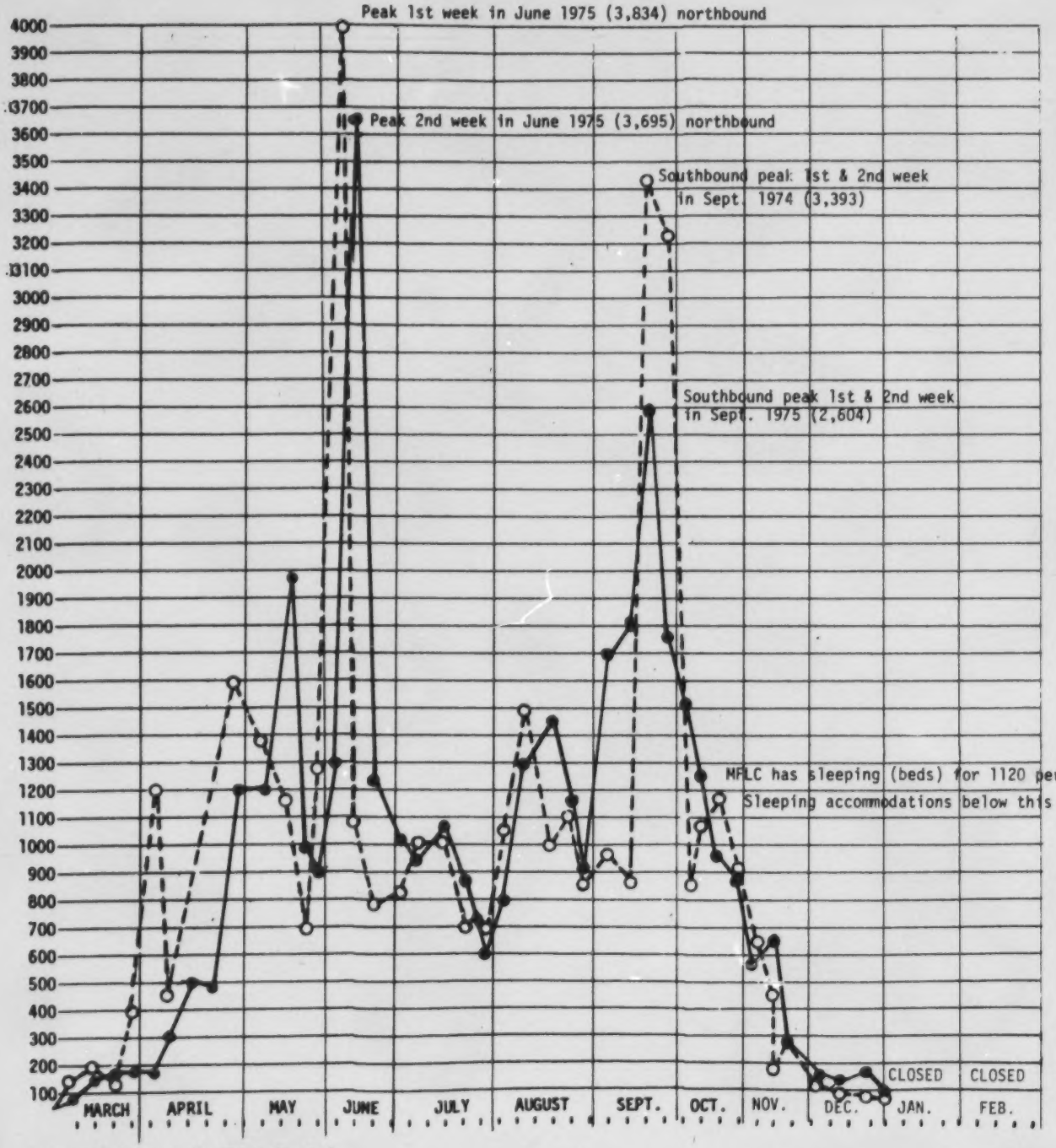
The decrease which has been documented at Hope is indicative of a general decline in the use of migrant labor across the country due to such factors as increased mechanization and the use of local labor when it is available. It is also possible that governmental regulations on both State and Federal levels (such as FLCRA and Part 398) have had an assessable effect upon the numbers of agricultural workers who migrate each year.

2. Types of Vehicles

Data collected from the records kept at the Migrant Farm Labor Center at Hope during our visit in June 1978 provided a very good picture of the types of vehicles which are being used to transport migrants in the Midwestern Stream. Records of the number and types of vehicles stopping at the rest camp were examined for the years of 1974 through

TRAFFIC FLOW CHART - MFLC

FY 1974-1975
FY 1975-1976

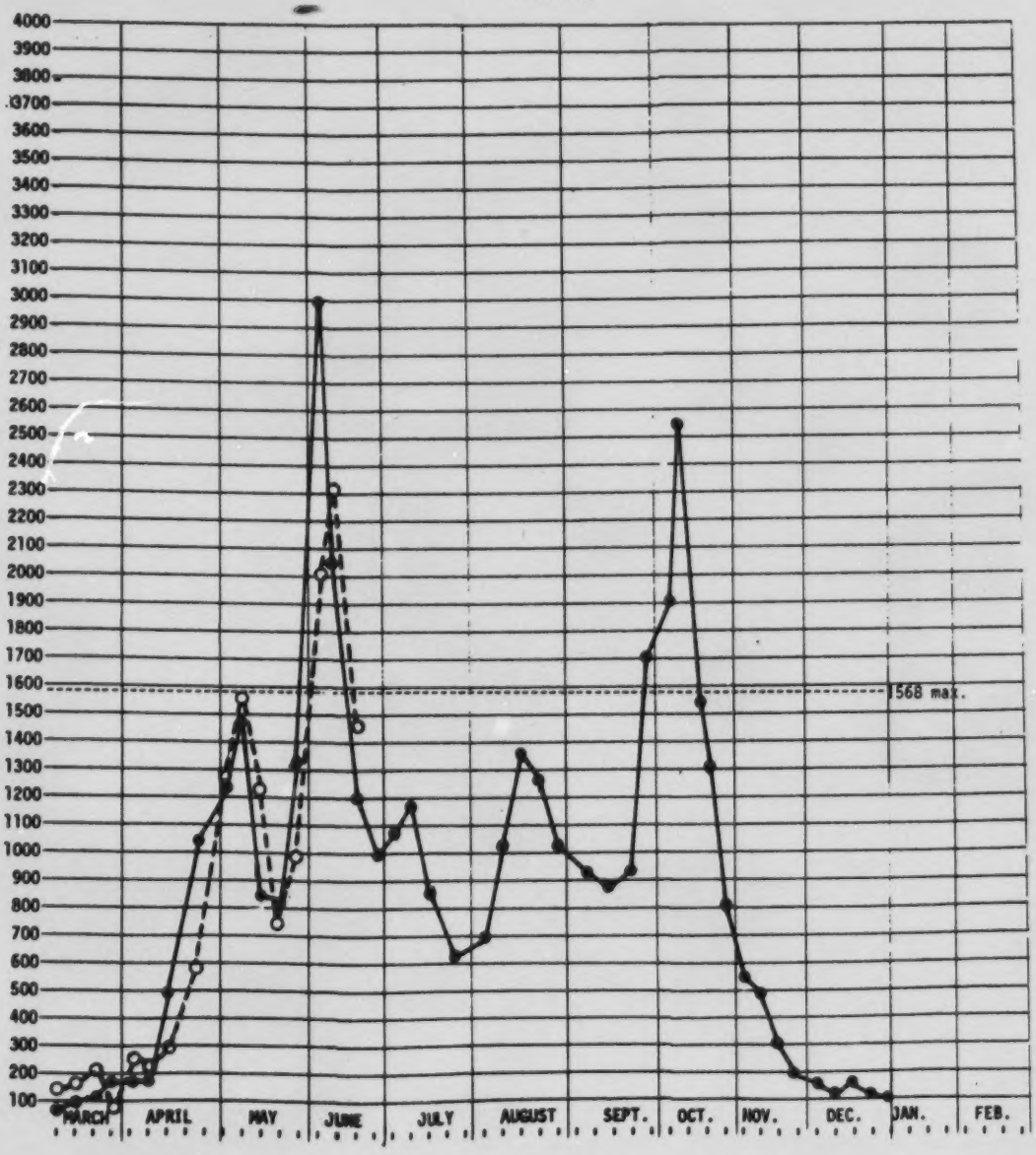


Horizontal by weeks (BOLO Blocks)
NOTE: Weekly reports each Monday; Some months have 5 reporting periods while other months have 4.

---- 1974-75-40,855
—— 1975-76-40,918

TRAFFIC FLOW CHART - MFLC

FY 1976-77
FY 1977-78



69

TYPES OF VEHICLES PASSING THROUGH
MFLC, HOPE, ARKANSAS, IN 1976*

VEHICLES	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly Total	Per Cent of Total Vehicles
Cars	44	158	416	346	343	332	266	864	184	39	2,992	46.2%
Station Wagons	7	24	84	88	45	39	52	92	23	6	460	7.1%
Pickups	16	123	349	354	115	271	215	541	132	14	2,130	32.9%
Vans	2	5	15	24	14	14	9	59	3	2	147	2.3%
Trucks	1	36	77	84	65	99	68	193	104	11	738	11.3%
Other	0	0	1	1	0	4	2	3	1	0	12	.2%
TOTAL											6,479	100.0%

TYPES OF VEHICLES PASSING THROUGH
MFLC, HOPE, ARKANSAS, IN 1977*

VEHICLES	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly Total	Per Cent of Total Vehicles
Cars	35	130	380	419	342	391	352	708	173	40	2,970	42.2%
Station Wagons	4	22	84	116	95	80	181	206	23	10	821	11.7%
Pickups	20	103	364	384	183	250	211	599	135	30	2,279	32.4%
Vans	1	12	15	56	16	23	49	51	12	7	242	3.4%
Trucks	2	34	104	99	80	96	49	155	71	6	696	9.9%
Other	1	0	3	2	6	8	4	7	1	0	32	.4%
TOTAL											7,040	100.0%

*Camp closed January and February

TYPES OF VEHICLES PASSING THROUGH
MFLC, HOPE, ARKANSAS, IN 1974*

VEHICLES	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly Total	Per Cent of Total Vehicles
Cars	46	266	554	701	257	191	319	504	198	30	3,066	53.4%
Station Wagons	0	0**	0***	55	65	87	34	159	128	0	528	9.2%
Pickups	0	0**	0***	350	124	206	210	328	146	11	1,375	24.0%
Vans	0	0	1	9	8	10	6	10	0	0	44	.7%
Trucks	0	34**	51	100	81	92	63	211	67	12	711	12.4%
Other	0	1	1***	2	4	4	2	3	0	0	17	.3%
TOTAL											5,741	100.0%

TYPES OF VEHICLES PASSING THROUGH
MFLC, HOPE, ARKANSAS, IN 1975*

VEHICLES	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Yearly Total	Per Cent of Total Vehicles
Cars	55	231	360	512	168	393	480	262	NO RECORDS	NO RECORDS	2,461	48.1%
Station Wagons	10	31	81	129	51	86	94	50			532	10.4%
Pickups	14	133	249	309	131	247	332	131			1,546	30.2%
Vans	2	2	7	9	5	11	12	2			50	1.0%
Trucks	4	49	83	132	54	70	74	56			522	10.2%
Other	0	0	1	0	2	0	3	0			6	.1%
TOTAL											5,117	100.0%

*Camp closed January and February.
**Records questionnable
***No records

1978. The preceding charts show monthly and yearly totals by type of vehicle and the percentage of each type of vehicle per year.

More than 50 percent of the vehicles registered at the Center since 1974 have been cars and station wagons which are outside the scope of Part 398. Pickup trucks constitute about 30 percent of the flow each year. Larger trucks represent about 10 percent of the vehicles passing through. The number of buses registered at the rest stop is so insignificant that they are merely grouped in the "other" category in the Center's records. The following graph illustrates the total number of each type of vehicle for the years 1974 through 1977.

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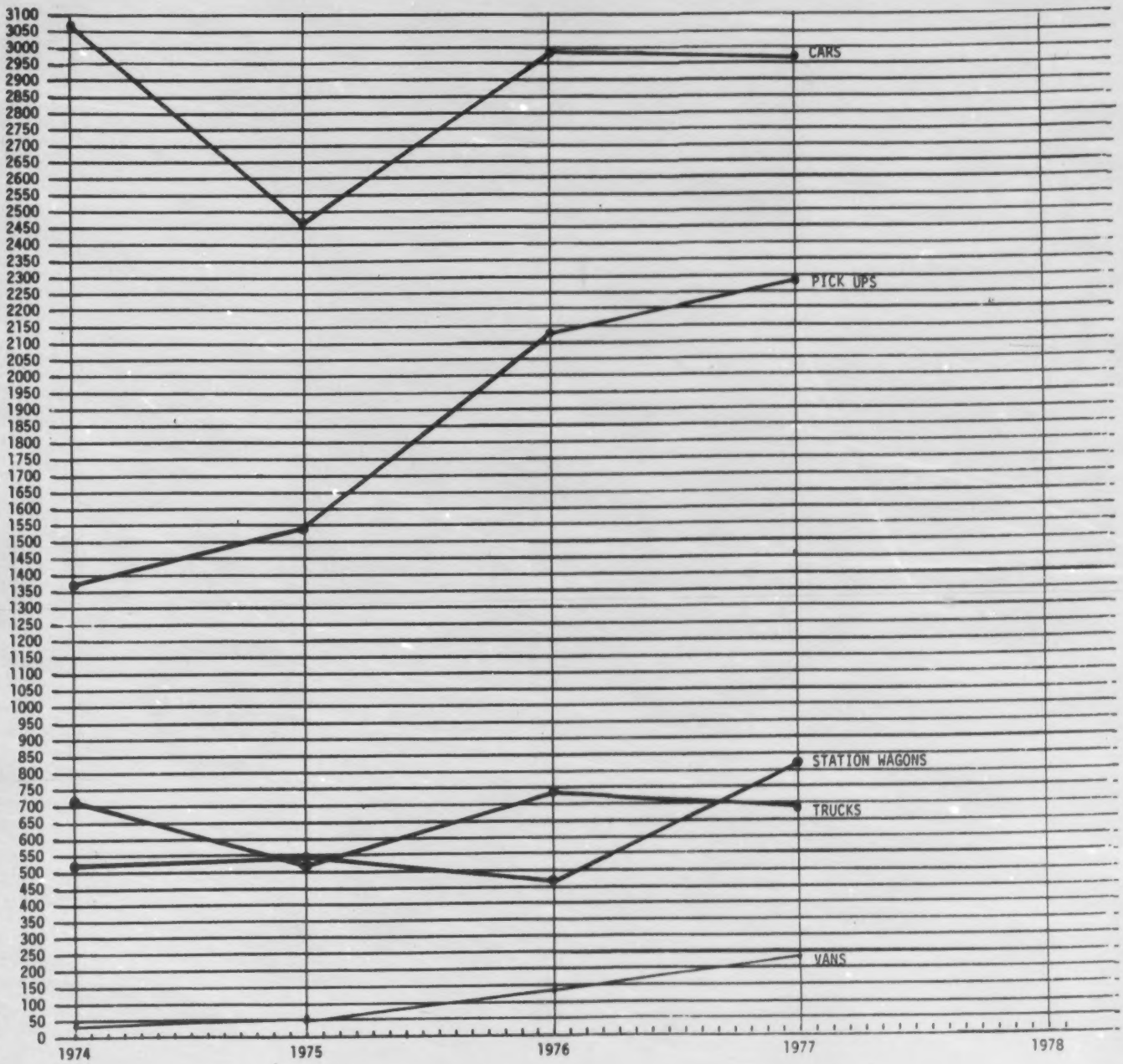
NUMBERS AND TYPES OF VEHICLES PASSING THROUGH MFLC, HOPE, ARKANSAS
1974 - 1977



Although the records for 1978 do not represent the entire year, they again show a high percentage of cars and station wagons (49.4 percent). However, for the first time, pickup trucks outnumbered cars. This is consistent with the trend noted for the years 1974 through 1977.

TYPES OF VEHICLES PASSING THROUGH MFLC, HOPE, ARKANSAS, IN 1978*

VEHICLES	Mar.	Apr.	May	June	Total	Per Cent of Total Vehicles
Cars	39	180	296	366	881	37.0%
Station Wagons	10	37	139	109	295	12.4%
Pickups	47	188	320	394	949	39.9%
Vans	2	11	23	32	68	2.9%
Trucks	1	37	78	59	175	7.4%
Other	2	3	1	4	10	.4%
TOTAL					2,378	100.0%

*Camp closed January and February.

Vehicle counts conducted by JAR over a 72-hour period in October 1977 reflect the same distribution among types of vehicles found in the Center's records. Over 50 percent of the vehicles observed were either cars or station wagons. Another 34 percent of the vehicles counted were pickup trucks. Most importantly, however, our observations confirmed the fact that most of the larger trucks, which made up 10 percent of the vehicles passing through the camp, were used to haul produce and other materials, not migrant workers.

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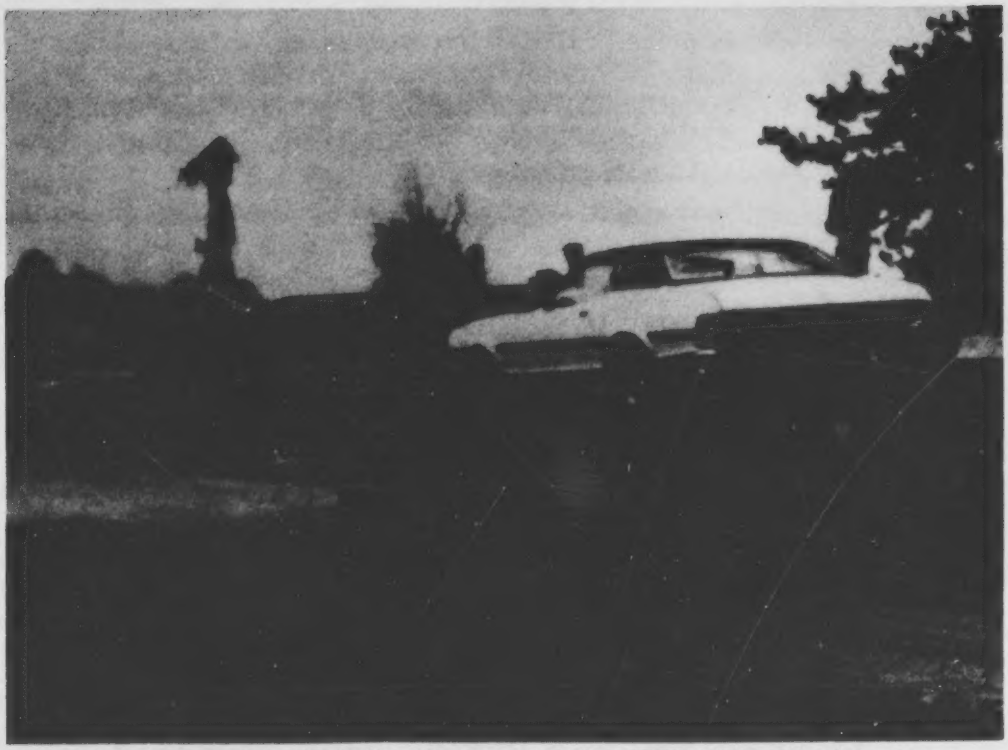

MANY OF THE TRUCKS OBSERVED IN THE MIDWEST WERE USED TO HAUL GOODS RATHER THAN MIGRANTS

VEHICLES STOPPING AT MFLC, HOPE ARKANSAS, 72-HOUR PERIOD, 1977

	VEHICLE		PERSONS IN VEHICLE		
Type of Vehicle	Number	Percent	Number	Percent	Avg./ Vehicle
Cars	72	44%	259	34%	3.6
Station Wagons	17	10%	85	11%	5.0
Pickups	55	34%	314	41%	5.7
Vans	1	1%	11	1%	11.0
Trucks	16	10%	78	10%	4.9
Buses	1	1%	18	3%	18.0
TOTAL	162	100%	765	100%	4.7

3. Migrant Passengers

a. Hope Migrant Farm Labor Center, Arkansas

The records and data obtained at the Hope camp do not include information on family membership. Therefore, we have studied the statistics of groups registering at MFLC as family members, crews or persons simply registering together in order to form some conclusions about the nature of migrant groups traveling the Midwestern Migrant Stream. We assumed that members of a group composed of one to five people have a strong possibility of being immediate family members.

The figures for the years 1975 and 1976 (those for 1977 are not available) indicate that the majority of groups registering at MFLC are those consisting of between one to five people and six to 10 people. In 1975, 30.5 percent of the groups had one to five members, and 37.9 percent had six to 10 members. In 1976, 33 percent of the groups had one to five members, and 37.4 percent of the groups had six to 10 members.

MIGRANT FARMWORKER GROUPS, MFLC, HOPE ARKANSAS (1975-1976)

SIZE OF GROUPS # OF PEOPLE*	1975		1976	
	# OF GROUPS	% OF TOTAL	# OF GROUPS	% OF TOTAL
1 - 5	1,297	30.5%	1,342	33.0%
6 - 10	1,609	37.9	1,518	37.4
11 - 15	708	16.7	664	16.4
16 - 25	449	10.6	418	10.3
26 - 50	169	4.0	114	2.8
51 - 75	11	.2	6	.1
76+	4	.1	0	0
TOTAL	4,247**	100.0%	4,062***	100.0%

*Figures include children traveling with the groups.
**40,918 people ***36,980 people

The data available for 1978 cover the period from March through June. These figures show that of the 997 groups passing through MFLC during this time period, 53.2 percent had one to five members and 26.4 percent had six to ten members.

MIGRANT FARMWORKER GROUPS, MFLC, HOPE, ARKANSAS (March-June 18, 1978)

SIZE OF GROUPS # OF PEOPLE	# OF GROUPS	% OF TOTAL
1 - 5	530	53.2%
6 - 10	263	26.4
11 - 15	157	15.7
16 - 25	46	4.6
26 - 50	1	.1
51 +	0	0
TOTAL	997	100.0%

This distribution pattern is not surprising in light of the fact that most migrant farmworkers registering at MFLC travel in cars, station wagons or pickups, vehicles which do not hold large numbers of people.

Another factor which must be considered is that a number of people may register as a group but may actually travel in more than one vehicle. From a sampling of the data taken from May of 1978, we found a number of groups which could possibly fall under the regulations of Part 398. For instance, on May 1, 1978, out of 22 groups registered, we found nine groups which could possibly be so regulated. One group consisted of 13 workers and 12 children traveling from Texas to Ohio

in two pickups. Another group consisted of eight workers and 13 children traveling from Texas to Ohio in two pickups and one van. Another group consisted of nine workers and three children traveling from Texas to Indiana in one truck and one pickup.

Although MFLC in Hope, Arkansas provides good documentation on migrant transportation in the Midwestern Stream, the records reviewed lacked the details which are needed to explore more deeply the number and relationships of passengers in vehicles which transport migrant farmworkers. Number and relationships of passengers are important criteria in determining the possible regulation of a vehicle under Part 398, since the regulation of Part 398 can be applied to only those vehicles transporting more than three people who are not immediate family members.

In early September 1978, a JAR field team visited five work camps in States north of Hope in the Midwestern Stream. Three of these camps were in Ohio and two were in Indiana. Data from these sites serve to develop a more complete picture of vehicle flow in this stream, supplementing information gathered in Texas and at the Hope rest stop. Since the data gathered from observation and records at Hope are the keys to our understanding of the Midwestern Stream, the representativeness of these data becomes a central concern. By selecting points upstream and drawing data samples at these locations, we were able to generate information which can be used to cross-examine the Hope data to determine whether it does in fact represent the pattern of migrant vehicle flow in the Midwestern Stream.

b. Ohio Labor Camps

1) Howard Zark Camp

On September 3, 1978, the Howard Zark Camp in Fremont, Ohio was visited. At that time, there was one crew consisting of 59 people

in the camp. The crew leader was not authorized to and did not transport migrants himself. All migrants were from Texas and had stopped to rest at MFLC in Hope before coming to Ohio. All of the farmworkers were transported in nine cars, eight pickups, and two trucks. Only five of these farmworkers were single people; the remainder were members of families.

2) John Hayvest Camp

This camp was also visited on September 3, 1978. The camp held one crew of 54 people. The crew leader was not authorized to and did not transport the crew members. All of the people had traveled from Texas, stopping in Hope, in 10 cars, 10 pickups, and one truck. There were nine families and 11 single people in the crew.

3) Village Farm

A final camp visited on September 3, 1978 was the Village Farm in Lindsey, Ohio. The farmworkers in this camp were similar in makeup to those in the other two camps visited in Ohio. There were 75 migrants from Texas, all of one crew with a crew leader who did not provide transportation. They traveled in five cars, six pickups, one van, and one truck. All were traveling as families.

VEHICLES OBSERVED IN THREE OHIO MIGRANT CAMPS - SEPTEMBER 3, 1978

TYPE OF VEHICLE	NUMBER	PERCENT OF TOTAL
Cars	24	45%
Station Wagons	0	0%
Pickups	24	45%
Vans	1	2%
Trucks	4	8%
Buses	0	0%
TOTAL	53	100%

Average of 3.5 persons per vehicle.

c. Indiana Labor Camps

1) Brooks Foods Incorporated

JAR staff visited the Brooks Foods Camp located in Mt. Summit, Indiana. At the time of the visit, there were five crews consisting of 206 migrants staying at the camp. Three of these crews were from Texas and two were from Florida. The following vehicle count was conducted on September 3, 1978.

VEHICLES OBSERVED AT BROOKS FOODS, INC. - SEPTEMBER 3, 1978

TYPES OF VEHICLES	NUMBER	PERCENT OF TOTAL
Cars	17	23%
Station Wagons	9	12%
Pickups	24	32%
Vans	11	15%
Trucks	13	18%
TOTAL	74	100%

One crew from Texas had traveled to Maryland and to Michigan before coming to Indiana on their way back to Texas. The crew leader was not authorized under FLCRA to transport any of the 36 members of his crew and he did not do so. Another crew of 37 migrants from Texas also provided their own transportation. Only five of those workers were not part of a family unit. The final crew from Texas consisted of 27 people. Again the crew leader did not provide transportation for any of the crew, and all but six of the migrants were members of families traveling together.

Florida was the home base of two of the crews that JAR talked with at Brooks Foods. One crew of 36 people was led by a crew leader who was not authorized to transport workers, but who did provide transportation for eight members of his crew. All but one of the members of this crew were traveling as families.

FLAT BED TRUCK OBSERVED AT HOPE MFLC

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The last crew at Brooks Foods had 70 crew members from Florida. The crew leader was authorized to transport farmworkers and used three vehicles to transport 17 people. The total number of vehicles used by this crew included two cars, three pickups, one van, four trucks, and one semi-trailer. All but eight of the crew were members of migrant families traveling together.

2) John Harris Camp

This camp is located in Losantville, Indiana. On September 1, 1978, there were three crews staying at the camp consisting of 117 people. All three crews were from Texas. Each used vehicles subject to regulation under Part 398.

One crew consisted of 40 members. The crew leader did not have authorization to transport farmworkers but had used two trucks and one pickup to transport a total of 18 unrelated crew members from Texas. He had transported eight people in one truck, four in another truck, and six in a pickup. He also had another pickup which he had bought during this trip to Indiana.

Information about the family status of crew members which this crew leader offered in conversation indicated that families did not always travel together in the same vehicle.

Another crew leader who was not authorized to transport migrant farmworkers transported 15 unrelated people in one truck from Texas to Indiana. The other seven people in the crew were members of the same family and traveled together in one pickup truck.

The crew leader of the third crew, consisting of 55 people, also did not have authorization to transport. Yet he carried 11 unrelated

members of his crew in one pickup and eight unrelated members in a truck. The crew leader offered conflicting information concerning family membership within the crew.

VEHICLES OBSERVED AT JOHN HARRIS CAMP - SEPTEMBER 1, 1978

TYPE OF VEHICLE	NUMBER	PERCENT OF TOTAL
Cars	6	22%
Pickups	14	52%
Vans	1	4%
Trucks	6	22%
TOTAL	27	100%

4. Summary of Findings

JAR conducted vehicle counts at six sites to evaluate the applicability of Part 398 to migrant transportation in the Midwestern Stream. During a 72-hour observation period at the Migrant Farm Labor Center at Hope, Arkansas and during three days of subsequent visits to five migrant work camps in Ohio and Indiana, JAR observed 1,275 migrants traveling in 316 vehicles.

Of these 316 vehicles, 145 were cars and station wagons and therefore exempt from the requirements of Part 398. Another 131 vehicles were either pickup trucks or vans. Most of these vehicles were carrying migrant families and probably came within the immediate family exception of Part 398. Only 39 large trucks were observed and, at Hope, one bus was observed. Many of these larger vehicles were used to haul the luggage and personal belongings of migrants who were traveling in private cars or pickup trucks.

Our observations were confirmed by the extensive records maintained at the Migrant Farm Labor Center at Hope concerning the 40,000 migrants who pass through the Center each year. These records date back to 1974 and indicate that more than 50 percent of the vehicles that have registered at the Center in the past five years have been cars and station wagons. About 30 percent of the vehicles passing through the camp each year are pickup trucks and only 10 percent are large trucks. Buses represent less than one percent of the flow of migrant vehicles through the Center each year. Again, the applicability of Part 398 seems to be limited to the use of a small number of pickup trucks and vans by migrants who are not members of the driver's immediate family. Although there are more trucks and buses used in the Midwestern Stream for interstate migrant transportation than were found in the Western Stream, they are used predominantly to haul personal belongings of migrants who are traveling in private cars or pickups.

This general picture needs to be qualified by the more precise data obtained at the five sites in Indiana and Ohio. Seventy-seven of the 410 persons in these camps traveled in vehicles subject to regulation. In this group -- which constitutes 19 percent of all migrants at the five locations -- 51 traveled in six trucks and 26 in four pickups. Only one of these trucks and two pickups belonged to crew leaders authorized to transport workers.

D. THE EASTERN STREAM

Florida, with an estimated migrant population of 130,000, is the principal home base of migrants in the Eastern Stream. Migrants from Florida and other southeastern States moving northward along the east coast are joined by a significant number of workers from Texas and a small number from Puerto Rico and the West Indies.[1]

Black Americans are the predominant ethnic group in the east coast migrant population. Hispanic workers, from Florida, Texas, and Puerto Rico, are the other major ethnic group represented.

As the principal feeder State in the Eastern Stream, Florida is the key to understanding the pattern of regulated migrant traffic along the east coast. For this reason, JAR research concentrated on DOL and State records from that State. Records were examined and a spot check was made of the contractors in the West Palm Beach area in the winter of 1977. Additional preliminary visits to various points in the Eastern Stream were made in the autumn of 1977. This summer field survey teams visited 18 destination points in receiver States. At each point, primary data samples were drawn from the stream in an effort to develop a more complete and reliable picture of the applicability of Part 398 to the flow of migrant vehicles on east coast highways.

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[1] JAR's review of MA 7-85 records from Texas indicates that 10 percent of migrants leaving Texas to find work enter the Eastern Stream. A 1976 study conducted by the Texas Governor's Office of Migrant Affairs shows five percent of migration from Texas going to Florida alone in that year.

1. Flow of Migrant Labor

a. Home Base Data - Florida

FLCRA data show that DOL Region IV (which includes Florida) has 3,468 contractors and crew leaders who are registered with DOL. Among this group, 1,436 applied for and received authorization to transport migrants. This is more than double the number in Region VI (including Texas), which ranks second, and over 14 times the number of authorized carriers in Region IX (including California), which ranks third.

With the assistance of Dan Glass of the Rural Manpower Section in the State Division of Employment Security, JAR staff was able to examine 1977 FLCRA records on Florida contractors authorized to transport migrants. These records contain information on the number and types of carriers used by each contractor and the number of workers each transported. A review of 600 of these forms (a 42 percent sample) produced the following information.

VEHICLES USED BY FLORIDA CONTRACTORS AUTHORIZED TO TRANSPORT MIGRANT WORKERS*

TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Bus	504	46%
Van	470	43%
Pickup	85	8%
Private Car	35	3%
TOTAL IN SAMPLE	1,094	100%

FARMWORKERS TRANSPORTED: 32,203

AVERAGE CREW SIZE: 54 (600 crews)

*Based on a 42% sample of 1977 FLCRA records

These data suggest that Florida contractors registered under FLCRA operate 1,200 buses and 1,119 vans which carry some 79,000 workers.

As noted earlier, however, this does not mean that 79,000 workers leave Florida in regulated vehicles each year. FLCRA forms do not distinguish between contractors using buses and vans to carry workers outside Florida and those who only move workers from place to place within the State. Nor is it certain that all members of a crew working for a contractor are transported in contractor-owned vehicles. In the Eastern Stream and elsewhere, findings indicate that substantial numbers of crew members travel interstate in private vehicles and then join their crews at pre-established destination points. A third caveat needs to be added here. Observations indicate that many of the trucks and buses owned by contractors registered to transport workers are used exclusively to transport luggage or produce on the trip northward. When they arrive at destination sites, they are often used to carry workers to and from the fields. Vehicles used in this way are covered by FLCRA regulations, but not by Part 398.

In order to spot check FLCRA data, in December 1977, JAR staff contacted 20 contractors in the West Palm Beach area who were authorized to transport workers and planned to take work crews north in 1978. The following information was gathered in discussions with them.

VEHICLES USED BY TWENTY FLORIDA CONTRACTORS INTERVIEWED

TYPE OF VEHICLE	NUMBER OF CREWS	PERCENT
Bus	12	55%
Van	2	9%
Private Car	8	36%
TOTAL	22*	100%

*Two crews use both buses and private cars.

The data indicate that while 55 percent of the contractors were using buses, the remainder did not use vehicles clearly covered by Part 398.

In spite of the important limitations noted, FLCRA data indicate that the applicability of Part 398 lies mainly in the regulation of vehicles based in Florida carrying workers into the Eastern Stream. Florida has by far the highest concentration of contractors authorized to transport workers, and of vehicles of the kind DOT regulations are clearly intended to cover. And unlike Texas and California, where the evidence available suggests that nearly all the potentially regulated vehicles travel exclusively within State boundaries, Florida-based contractors transporting large groups of unrelated workers enter the Eastern Stream in significant numbers.

MA 7-85 forms filed by contractors who want to use DOL employment services provide information on the in-stream migratory patterns of workers leaving Florida. Itineraries on 302 of the 784 forms filed by Florida contractors in 1977 were reviewed by JAR staff. In this 38 percent sample, two out of three contractors filing left Florida with work crews during the year.

CONTRACTORS PROVIDING TRANSPORTATION FOR MIGRANT WORKERS IN FLORIDA

	CONTRACTORS		PEOPLE INVOLVED	
	Number	Percent	Number	Percent
Transporting crews*	200	66%	6,297	77%
Not transporting crews	102	34%	2,407	23%

Represents 38 percent of 1977 MA 7-85 forms.

*Average Crew Size: 32

This sample suggests that these contractors brought 16,356 workers out of Florida with them, but this cannot be established statistically.[2]

Examination of MA 7-85 records yielded the following information on the destination points of 302 contractors leaving Florida.

ITINERARIES OF CONTRACTORS LEAVING FLORIDA HOME BASES*

Eastern States	629	96%
North Carolina	159	
South Carolina	153	
Virginia	87	
New York	72	
Eastern Shore States (Md., Del., N.J.)	68	
Pennsylvania	37	
New England States	16	
Other	37	
Midwestern States	27	4%
TOTAL	656	100%

* Represents a 38 percent of 1977 MA 7-85 forms.

Itineraries on file indicate that 36 percent of Florida contractors work in a single destination State, 34 percent stop at two States, and the remaining 30 percent work in three or more States while in stream.

[2]Officials from the Florida Rural Manpower office estimate that only 35 percent of contractors taking crews out of Florida file these voluntary MA 7-85 forms.

The 1977 Rural Manpower Report prepared by the Florida Division of Employment Security provides another source of information on the interstate migratory patterns of Florida-based workers. The 1977 report contains information on requests for Florida work crews received from northern States.

DESTINATION STATE REQUESTS FOR FLORIDA MIGRANT WORKERS

STATES	NUMBER	WORKERS
New York	168	3,378
North Carolina	110	3,134
Virginia	86	2,968
Massachusetts	44	460
Maine	24	405
Connecticut	23	497
Others	77	8,913
TOTAL	532	13,819

Source: Florida Rural Manpower Report, 1977.

Before turning to the destination State phase of this report on the Eastern Stream it should be noted that Florida is also a major receiver State for migrants from the Midwestern Stream. State records show that an average of 6,500 interstate workers can be found working in Florida's citrus groves and truck gardens each month. On an annual basis, this influx of workers represents 16 percent of Florida's total seasonal labor force.

SEASONAL AGRICULTURAL EMPLOYMENT IN FLORIDA					
	TOTAL	LOCAL	INTRASTATE	INTERSTATE	
				Number	Percent
Average per month	41,744	32,632	2,534	6,578	16%
January	58,951	42,137	4,167	12,647	21%

Source: Florida Annual Rural Manpower Report, 1977.

It appears that Part 398 has limited applicability to this group. They are, according to Florida's State Manpower Report, "Spanish-speaking Texas Mexicans and Mexican Nationals with alien permit cards."[3] The report goes on to say that most travel in small units by private car.[4]

b. Destination States

The migrant population in the Eastern Stream is distributed among small widely scattered camps in destination States along the eastern seaboard stretching from Georgia to Maine. There are no State operated camps here such as are found in west coast destination States. And there is no central stop-over point (such as Hope, Arkansas in the Midwestern Stream) where a high volume of migrant traffic can be observed.

Because of this, JAR researchers located and secured access to a series of small, privately-operated migrant camps along the east coast. No records were kept at the camps visited. Accessibility was also a problem in some areas. Most east coast camps are on private property,

[3] Florida Annual Rural Manpower Report, 1977, p.20.

[4] Ibid.

and many landowners are reluctant to admit outsiders. We were, however, able to visit 18 camps in five States, and to draw data pertinent to the applicability of Part 398 in the Eastern Stream from each of these locations.

1) North Carolina

On August 5 and 6, 1978, JAR staff visited six migrant camps in Johnson County, North Carolina. Ms. Clemens, Supervisor of the Regional Migrant Headquarters, Smithfield, North Carolina, assisted us in locating and gaining entrance to these camps.

Two hundred and thirty migrants were found in the six sites visited. All were working as crews; seven of these were Black and four were Hispanic. Florida was the home bas for all these crews. They arrived in North Carolina in late June and planned to return to Florida in late September.

A total of 79 vehicles were counted in these camps. These are broken down by a number and type in the following table.

VEHICLES IN SIX NORTH CAROLINA MIGRANT CAMPS

TYPE	NUMBER	PERCENT OF TOTAL
Car	51	64.5%
Station Wagon	7	8.8%
Van	12	15.2%
Bus	1	1.2%
Truck	8	10.1%
TOTAL	79	100.0%

The single bus observed at these locations had carried 22 workers from Florida to North Carolina. Four of the 12 vans observed had also been used in the interstate transportation of more than three unrelated workers. Of the eight trucks, some were used to carry workers to the fields in Johnson County and had not carried passengers in interstate commerce, according to crew leaders and crew members.

The bus and four vans subject to regulation at these sites reportedly carried 47 migrants from Florida to North Carolina; this is 20 percent of the migrant population of 234 counted at these six sites.

We were able to speak with eight of the crew leaders in these camps. All indicated they were registered under FLCRA and authorized to transport workers. However, only three of these men had transported workers interstate in regulated vehicles.

The consensus among crew leaders was that the practice of carrying large groups of unrelated workers from State to State in trucks or buses had declined noticeably in recent years. Factors cited for this decline were: the high cost of vehicle insurance, inspection requirements, State and Federal government regulations (in general), and migrant preference for private vehicles.

2) Maryland

JAR staff made two visits to the migrant labor camp in Westover, Maryland. This camp is the largest encountered on the east coast. Since no records are kept concerning the migrant flow at Westover of the vehicles used by these people, vehicle counts, observation and conversations with camp administrators and migrant workers provide the basis for our understanding of the site.

During the initial visit on July 15 and 16, 500 migrant workers were present. Nearly all of these people were members of the 17 crews staying at the camp. Eight of the crews were Hispanic and nine were Black. All came from home bases in Florida.

One hundred and three vehicles were counted at Westover during the July 15 and 16 visit. These vehicles are broken down by number and type in the following table.

VEHICLES AT THE WESTOVER, MARYLAND MIGRANT CAMP
July 15 and 16, 1978

TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Cars	36	35%
Pickups	5	5%
Campers	14	13%
Vans	12	12%
Trucks	24	23%
Buses	12	12%
TOTAL	103	100%

Conversations with crew leaders at the camp revealed that 11 crews traveled from Florida as a group in buses subject to DOT regulation. All nine Black crews traveled as a group in buses. Among Hispanic crews, six of the eight present traveled by family in private cars.

While there were only 12 buses at the camp, reports from crew leaders indicate that nearly half of the 500 people at Westover at the time had used these vehicles to travel north from Florida.

Exchanges during the visit with nine crew leaders who operated buses indicated that six of these were owned by crew leaders and three by contractors. All nine had been registered and inspected as specified by FLCRA regulations. The driver of each vehicle had both a doctor's certificate and a valid Florida chauffeur's license in his possession. We were unable to obtain information of this kind on the other three buses in camp and on the 23 trucks counted. Four of these trucks were observed carrying workers to and from the fields.

During this preliminary visit, no information on changes in the flow or condition of regulated vehicles was elicited and recorded.

On July 27, 1978, after receiving word from camp administrators that the camp had entered its peak period in terms of migrant flow, JAR staff made a second two-day visit to Westover. This time we were accompanied by staff from the Salisbury Migrant Education Elementary School. At this time, over 600 migrants were staying at the camp. One hundred and thirty-seven vehicles were counted; 85 percent of these were license in Florida.

Forty-two percent of these vehicles were cars or station wagons. Pickup trucks, vans, and campers, which made up 33 percent of the total, were used almost exclusively by family units. Only two vans observed were set up to seat groups of riders and used to transport a total of 98 workers from Florida to Maryland. In each of these cases the vehicle was registered, and in three cases we were able to verify that the driver held a doctor's certificate and chauffeur's license. The other three buses were reportedly used to carry luggage during the interstate leg of the journey north.

VEHICLES AT WESTOVER, JULY 27-28, 1978

TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Cars	51	32.2
Pickups	25	18.2
Campers	5	3.6
Vans	16	11.7
Trucks	27	19.7
Buses	7	5.1
Station Wagons	6	4.3
TOTAL IN SAMPLE	137	100.0%

One Black crew of 18 unrelated workers relied on a pickup and van to travel interstate. Both vehicles were registered under FLCRA, and in both cases their drivers had the required papers.

Our findings indicate that at least 116 (or 19 percent of the camp population) traveled from Florida to Maryland in regulated vehicles. Here, as in North Carolina, crew leaders interviewed uniformly agreed that the number of vehicles falling under Part 398 had decreased noticeably in recent years. The reasons cited for this change were the same: too many regulations (of all kinds, State and Federal); high insurance rates; and the pressures of State regulations in particular. Neither here nor in North Carolina was there any reference to Part 398 as a particular cause of the change.

3) Delaware

JAR staff visited three migrant camps in the vicinity of Magnolia, Woodside, and Bridgeville, Delaware on July 11, 1978. The Reverend John Kelly of the Farm Workers Ministry assisted us in gaining access to the sites.

Three Hispanic crews totaling 117 persons were found at these locations. The crews were all from Texas. They had traveled east in 22 vehicles.

VEHICLES AT THREE DELAWARE MIGRANT CAMPS, JULY 11, 1978

TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Cars	15	68.0%
Pickups	2	9.1%
Vans	2	9.1%
Buses	2	9.1%
Trucks	1	4.5%
TOTAL IN SAMPLE	22	100%

The two buses and two vans found here were, according to the crew leaders who owned them, regulated vehicles which had carried 85 of the 117 migrants from Texas to Delaware; this is 73 percent of the populations at the three sites.

All vehicles subject to DOT regulations were registered under FLCRA. Each of the three crew leaders who owned the vehicles was authorized to transport workers. The operators of each vehicle had both Texas

chauffeur's licenses and medical certificates required by FLCRA. All vehicles apperared to be in excellent condition.

Two of the three crew leaders contacted observed that vehicles subject to Part 398 provisions were diminishing in number. Both cited the complexity of government regulations, which crew leaders often found impossible to grasp and comply with. Equally important, according to these men, is the cost of vehicle insurance. One crew leader stated that it cost him $2,000 a year to insure a single bus. Both men stated they felt insurance companies were reluctant to issue policies to Mexican-Americans. One suggested that insurance should be made available at lower costs through a government agency.

4) New Jersey

Three migrant camps housing 141 workers and families were visited in New Jersey. Two camps were near the town of Bridgeton and the third was in the vicinity of Rosenlyn. Marco Tulio Minoy, a Deacon in the Migrant Farm Workers Ministry, Diocese of Camden, helped us to gain access to these camps.

Twenty vehicles were observed at these three sites. These are broken down by type in the following table.

VEHICLES AT THREE NEW JERSEY MIGRANT CAMPS, JULY 13, 1978

TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Cars	12	60%
Vans	2	10%
Buses	4	20%
Trucks	2	10%
TOTAL IN SAMPLE	20	100%

None of these vehicles fall under Part 398 provisions.

The largest camp, at the Sunny Slope Farms near Bridgeton, housed 81 workers in two crews. All were from Puerto Rico.[5] Along with other migrants from Puerto Rico entering the country under a contract between the U.S. government and Puerto Rico, these workers were first flown to New York. From there they were carried to nearby labor camps by government-operated buses.

Once at the camp, these Puerto Rican crews were carried to and from work by two trucks, a bus and one van owned and operated by Sunny Slope Farms. Since no State lines are crossed by these vehicles they are unregulated.

The two buses at the camp near Rosenlyn which housed 12 workers also belonged to the farm owner for whom these migrants worked. The buses were used to carry workers to and from the fields. The migrants here were all Mexican citizens who had traveled to New Jersey in private automobiles.

We found a similar situation at the third location visited. In this case the crew was composed of 61 Hispanic workers; some were from Mexico and some from South Texas.

5) New York

Five labor camps were visited in New York State on July 15, 16, and 17. Two of these were near Goshen. The other three were in the Pine

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[5] We found a high concentration of Puerto Rican workers throughout the Salem, Landsville, Deerfield, Bridgeton, and Rosenlyn areas of New Jersey.

Island area.[6] Migrants in these camps were among the most ethnically and geographically diverse encountered at any location during the study.

The first camp visited had one crew of 51 Hispanic workers from Texas. These migrants arrived in June and planned to return to Texas in late October or November. The second camp had one crew home-based in Arizona. Some of this crew of 40 were from California. While predominantly Hispanic, it included a few Filipinos. The crew had left Arizona in June and planned to return in September.

One Pine Island crew of 20 included Hispanic workers from Texas and Mexico and four Puerto Rican workers. The Hispanic members of the crew left Texas in June and expected to return in late October. A second camp which JAR visited had a crew of white farmworkers who had come to New York from Vero Beach, Florida. They had left in June and would return in September. At the third Pine Island camp, we found a crew of 20 Black migrants from Tifford, Florida.

One hundred forty-three persons and 28 vehicles were counted at these locations.

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[6] JAR staff was assisted in locating and gaining access to these camps by Ms. Peggy Webber, Project Director, and Mrs. Alice Ruiz, an interpreter from the Farm Labor Family Health Center, Orange and Ulster counties, New York.

VEHICLES AT FIVE NEW YORK CAMPS, JULY 15, 16, 17, 1978		
TYPE OF VEHICLE	NUMBER REGISTERED	PERCENT OF SAMPLE
Cars	26	93.0%
Vans	1	3.5%
Buses	1	3.5%
TOTAL IN SAMPLE	28	100.0%

The single bus observed belonged to a farm owner. It was only used to take workers to the fields. The van encountered here carried two families (15 persons) who were members of a white crew from Florida working at one of the Pine Island camps. Therefore, it is technically regulated by Part 398. The Black crew of 20 from Florida had come north on Greyhound buses. The Filipinos working with one Hispanic crew and the Mexican nationals working with another had also arrived on commercial buses. The remainder of workers here had traveled to New York in private cars.

Two Hispanic crew leaders spoken with at New York camps said they used regulated buses until four or five years ago. They stopped because of high insurance rates and complicated regulations.

2. Summary of Findings

Eighteen sites in the five States in the Eastern Stream were visited in the course of the study. All sites were work camps. There were 1,735 migrants staying at these locations at the time they were visited; 389 vehicles were counted. The following chart provides a breakdown of vehicles observed by type and shows the destination States where they were found.

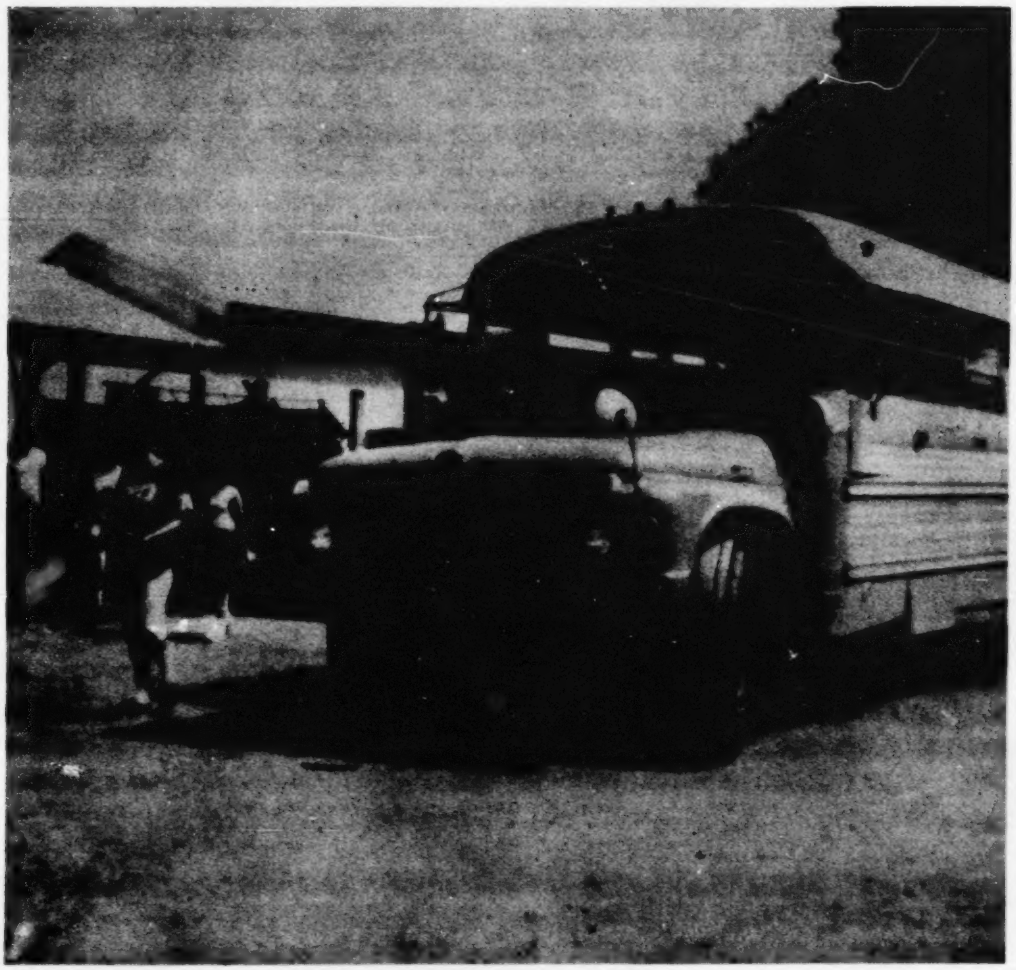
VEHICLES OBSERVED AT 18 SITES IN THE EASTERN STREAM						
TYPE OF VEHICLE	MD.*	DE.	N.Y.	N.J.	N.C.	TOTAL
Cars	87	15	26	12	51	191
Station Wagons	6				7	13
Vans	28	2	1	2	12	45
Pickups/Campers	49				5	54
Trucks	51	3		2	3	59
Buses	19	2	1	4	1	27
TOTAL	240	22	28	20	79	389

*Two counts were made at Westover, Maryland.

The 204 cars and station wagons observed, which made up 52 percent of the total traffic, clearly fall outside the scope of Part 398. Ninety-nine vans, pickups and campers were counted. These vehicles, which may be regulated depending on how they are used, made up 25 percent of the traffic flow at points surveyed in the Eastern Stream. Eighty-six trucks and buses, which are clearly regulated when carrying three or more unrelated migrants, were counted at the 18 sites. These vehicles constituted 22 percent of the flow.

Observations and inquiries by JAR staff indicate that approximately 513 persons, or 30 percent of all migrants staying at the 18 camps, had traveled interstate in regulated vehicles. Four hundred thirty of these people traveled in buses. The other 83 people, who amounted to only 16 percent of all persons traveling in regulated vehicles, used campers, vans, or pickups. With the exception of one van used by two families from Florida, all vehicles observed which

appeared to be covered by Part 398 were registered under FLCRA. In the cases where we were able to secure the information, we found that operators of registered vehicles had the required doctor's certificate and chauffeur's license. All field reports on the condition of regulated vehicles indicated they appeared to be in good condition.



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The consensus among camp administrators, crew leaders, and migrants spoken to in the course of the east coast study was that the incidence of migrant transportation by regulated vehicles had declined noticeably in recent years. The reasons given were always the same: State and Federal regulations in general, and high insurance rates on vehicles carrying large groups of migrant workers in particular. Part 398 of the Motor Carrier Safety Regulations was not mentioned specifically as a cause for the change in vehicle use.

E. SUMMARY OF FINDINGS

During site visits to 32 migrant camps or rest areas in 11 States, JAR counted 1,116 vehicles carrying 5,485 workers. Of those 1,116 vehicles, 51 percent were cars and station wagons except by virtue of Part 398.1 (b). Another 37 percent were pickup trucks and vans potentially subject to regulation under a strict interpretation of Part 398 which generally carried only migrant families.[1] Only 2 percent, or 129 vehicles, were large trucks or buses. In camps which maintained vehicle records, these observations were confirmed by aggregate data often going back several years.

VEHICLES OBSERVED IN EACH OF THE THREE STREAMS

TYPE OF VEHICLE	WESTERN STREAM	MIDWESTERN STREAM	EASTERN STREAM	TOTAL
Cars	180	119	191	490
Station Wagons	38	40	13	91
Pickups	167	117	45	329
Vans	9	14	54	77
Trucks	3	39	59	101
Buses	0	1	27	28
TOTAL	397	330	389	1,116

[1] It was not possible to estimate what percentage of these vehicles came within the "immediate family" exception of Part 398.1(b).

V. CURRENT APPLICABILITY OF PART 398

The study suggests that Part 398, in its present form, has very limited applicability to migrant transportation in the United States. The observations and data indicate that there has been a radical shift during the past 20 years in the mode of transportation used by migrants traveling in the three major streams. The era of large trucks and buses hauling great numbers of migrants in interstate transportation has ended. Today most migrants travel in family units in either a private automobile or pickup truck. This is not to say that there are no migrants who still travel in large trucks or buses. But the trend is away from these larger modes of transportation and that trend appears to be continuing.

Conversations with camp administrators, migrant crew leaders, and migrant workers indicated that many of the large trucks and buses which remain are now being used to transport the personal belongings of migrant families. By pooling their belongings into one large truck or bus, the migrant families can travel with much greater comfort in their private automobile or pickup truck. These large trucks and buses owned by a crew leader thereby avoid the safety requirements of Part 398 and also avoid the heavy premiums for insurance required under FLCRA. However, these vehicles are covered by Parts 390-397 of the Federal Motor Carrier Safety Regulations. Therefore, for this class of vehicles that was formerly used to haul migrants, Part 398 may no longer be necessary.

The large percentage of migrants who are traveling by private car or pickup truck are already subject to the normal State regulations concerning registration, inspection, and licensing. In each of the three major home base States (Florida, Texas, and California), which contain 95 percent of the migrant labor force in the United States,

the Registry of Motor Vehicles has explicit regulations, similar to Part 398, concerning the operation and maintenance of farm labor vehicles. And because of the large number of contractors who use one of these three States as a home base, there are very few of the enforcement problems which confront other States.

It is true that a State which provides neither a destination nor point of departure has problems in enforcing its laws against migrant vehicles passing through its borders. The following quote from the Pennsylvania Governor's Committee on Migratory Labor illustrates this problem:

> The Commonwealth of Pennsylvania is particularly concerned with the problem of proper transportation of migrant workers. Not only does this State employ approximately 10,000 migrant workers annually, but its highways constitute the main routes by which the East Coast migrant stream moves north into New York and the New England States. Pennsylvania has attempted, to the limit of its existing authority, to promulgate transportation regulations to insure that migrant vehicles will be safe. The criteria contained in these regulations are virtually identical to those of the Commission's. However, these regulations cannot be made applicable to vehicles which move through the State, having neither a destination nor point of departure within Pennsylvania.[2]

This type of enforcement problem is one of the reasons why a Federal regulation such as Part 398 was originally considered to be needed, and was promulgated. But because of existing regulations in California,

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[2]Statement to the Interstate Commerce Commission in Support of Proposed Rule 198.8 Providing for "Out-of-Service" Procedures in the Case of Vehicles Used in Transportation of Migrant Workers. June 12, 1959.

Texas and Florida, it may now be possible to enforce most of the requirements of Part 398 through the mechanisms and laws of the home base States.

Article 911(g) of the Texas Penal Code and Article 4, Title 13, of the California Administrative Code are identical to Part 398 in content. Chapter 316.620 of Florida Traffic Statutes is identical to the section of Part 398 which specifies parts and accessories necessary for the safe operation of a farm labor vehicle.

However, the Florida Traffic statutes are less specific than Part 398 and differ on several items from the minimum physical requirements cited in Part 398. For example, Part 398 would bar any individual who has suffered the loss of a foot, leg, hand, or arm from operating a migrant worker vehicle. The deaf are also excluded. Florida statutes are less specific. They state that the Department of Motor Vehicles shall not issue a license:

> To any person, as an operator or chauffeur, who has been adjudged to be afflicted with, or suffering from any mental disability or disease and who has not at the time of application been restored to competency by the methods provided by law.

They further state that the Department will deny a license

> To any person, when the Department has good cause to believe that the operation of a motor vehicle on the highways by such a person would be detrimental to public safety or welfare. Deafness alone shall not prevent the person afflicted from being issued an operator's license.

Minimum age and language fluency requirements also differ. The minimum age of an operator of a migrant worker vehicle is not specified in Florida Traffic Statutes, nor do they mandate fluency in English. In contrast, Part 398 of the Motor Carrier Regulations requires that

operators of vehicles used to transport migrant workers must be at least 21 years of age and be able to speak English well enough to understand highway traffic signals, signs, and directions.

Since California and Texas have statutes which are identical in content to Part 398, and since the Florida statutes differ only in part from Part 398, there is a possibility that the applicability of the DOT regulation has been further preempted by State law. Although the three home base States cannot regulate the safety and condition of migrant vehicles while they are moving in interstate commerce, this movement is limited to only six months out of the year (April-September). By definition, these vehicles return to their home base State for the remaining six months and are subject to that State's jurisdiction during those remaining six months. Presumably this involved the renewal of licenses, registrations, and inspection stickers.

There is also a great deal of overlap between the Department of Labor regulations and Part 398 of the Federal Motor Carrier Safety Regulations because the FLCRA requirements apply to any farm labor contractor who transports migrant labor. In fact, the FLCRA requirements are much broader in scope since they apply to intrastate as well as interstate transportation. The three principal transportation exceptions under the FLCRA regulations involve contractors transporting migrants within a 25 mile intrastate radius for not more than 13 weeks per year, contractors transporting migrant labor solely to their own operation, and contractors who are not transporting for a fee. These latter two exceptions represent the only major area where FLCRA may have a narrower application than Part 398.

Although the principal requirements of FLCRA center upon insurance or financial responsibility, compliance with Part 398 of the Federal

Motor Carrier Safety Regulations is required before a Certificate of Registration authorizing a farm labor contractor to transport migrant workers can be issued by the Department of Labor. Section 40.19 of the FLCRA regulations states:

> No farm labor contractor may transport migrant workers within the meaning of the Act, unless said person shall submit:
>
> (3) Written proof that every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations promulgated by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation.

Since the FLCRA requirements include compliance with both Department of Transportation (DOT) and State safety regulations, enforcement by DOL could potentially make enforcement by DOT unnecessary.

There are various administrative sanctions (revocation of certificate), civil sanctions (injunctive relief and fines of up to $1,000), and criminal sanctions available to the Secretary of Labor for violation of FLCRA regulations. (See 40.62). There are currently 1,200 Wage Hour Compliance Officers who enforce the provision of FLCRA -- especially those provisions concerning the housing of migrants and those provisions concerning the transportation of migrants. Effective enforcement will require still more resources. It is still particularly hard to catch those farm labor contractors who do not register ("freewheelers"). It is estimated by informed sources that as many as 50 percent of farm labor contractors do not register under FLCRA. Methods of enforcement against these "freewheelers" need to be investigated.

In conclusion, JAR's study of the patterns of modes of migrant transportation in the United States indicates that Part 398 of the Federal

Motor Carrier Safety Regulations has very limited applicability today. The incidence of migrant transportation in vehicles regulated by Part 398 has declined noticeably in recent years and that decline is continuing. It is clear that most migrants are traveling in vehicles which are not subject to regulation under Part 398. Furthermore, many of the vehicles that are not subject to DOT regulations must comply with either State statutes or DOL regulations which are almost identical in purpose to that of Part 398.

APPENDICES

APPENDIX A

FLCRA REGULATIONS

Regulations, Part 40:
Farm Labor Contractor Registration
Subpart A-Registration
Subpart B-Administrative Proceedings

Title 29 of the
Code of Federal Regulations

Registration Requirements and Administrative Proceedings including
Assessment, Notice, and Collection of Civil Money Penalties for Violations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1369
(Revised May 1977)

113

Regulations, Part 40: Farm Labor Contractor Registration

Subpart A — Registration
Subpart B - Administrative Proceedings

[This publication conforms to the Code of Federal Regulations as of May 5, 1977, the date this reprint was authorized.]

PART 40—FARM LABOR CONTRACTOR REGISTRATION

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

General

Sec.
40.1 Purpose and scope.
40.2 Definitions.
40.3 Certificate of Registration required.
40.4 Farm Labor Contractor Employee Identification Card required.
40.5 Corporations, partnerships, associations and other organizations.
40.6 Public central registry.
40.7 Compliance with State statutes.
40.8 Filing of applications, notices and documents.
40.9 Accuracy of information, statements and data.

Registration Requirements

40.11 Filing of applications for Certificate of Registration.
40.12 Execution of application for Certificate of Registration.
40.13 Appointment of Secretary as agent for substituted service.
40.14 Vehicle liability insurance.
40.15 Proof of financial responsibility in lieu of insurance.
40.16 Qualifications and eligibility of insurance carriers.
40.17 Duration of insurance or liability bond.
40.18 Limitations on cancellation of insurance or liability bond.
40.19 Authorization to transport migrant workers.
40.20 Authorization to house migrant workers.
40.21 Expiration and renewal of Certificate of Registration.
40.22 Replacement of Certificate of Registration.

Employee Identification

40.31 Filing of application for Farm Labor Contractor Employee Identification Card.
40.32 Execution and Content of application for Farm Labor Contractor Employee Identification Card.
40.33 Authorized use of Farm Labor Contractor Employee Identification Card.
40.34 Replacement of Farm Labor Contractor Employee Identification Card, lost card or change of employment.
40.35 Expiration and renewal of Farm Labor Contractor Employee Identification Card.

Action on Applications

40.41 Office of filing, action.
40.42 Issuance, refusal to issue, suspension, revocation or refusal to renew: Farm Labor Contractor Certificate of Registration or Farm Labor Contractor Employee Identification Card.

Obligations and Prohibited Acts

40.51 Obligations of a farm labor contractor.
40.52 Obligations of person holding valid Farm Labor Contractor Employee Identification Card.
40.53 Obligations of grower, processor, and other user.
40.54 Discrimination prohibited.

Violations and Sanctions

40.61 Report of violations, investigations, issuance of subpenas.
40.62 Sanctions.
40.63 Certificates of Registration and Farm Labor Contractor Employee Identification Cards—grounds for revocation or suspension or refusal to issue or to renew.
40.64 Denial of facilities and services of Wagner-Peyser Act.
40.65 Civil money and other administrative penalties.
40.66 Waiver of rights.

Subpart B—Administrative Proceedings

General

40.101 Establishment of procedures and rules of practice.
40.102 Applicability of procedures and rules.

Procedures Relating to Hearings on Refusal To Issue or Renew, or To Suspend or Revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card

40.111 Refusal to issue or renew, or to suspend or revoke—written notice required.
40.112 Contents of notice.
40.113 Request for hearing.

Procedures Relating to Hearings on Civil Money Penalties

40.121 Assessment of civil money penalty, written notice required.

Sec.
40.122 Contents of notice.
40.123 Request for hearing.
40.124 Civil money penalties—payment and collection.

PROCEDURES RELATING TO HEARINGS FOR DENIAL OF WAGNER-PEYSER FACILITIES

40.131 Denial of facilities and services authorized by Wagner-Peyser Act.
40.132 Contents of notice.
40.133 Request for hearing.
40.134 Automatic denial of facilities and services authorized by Wagner-Peyser Act—duration.

PROCEDURES RELATING TO THE FILING OF A COMPLAINT ALLEGING DISCRIMINATORY CONDUCT

40.141 Discriminatory conduct—complaint.

FORM AND TIME OF REQUEST FOR HEARING

40.151 Form of request.
40.152 Time for making request.

PROCEDURES RELATING TO SUBSTITUTE SERVICE

40.161 Change of address.
40.162 Substituted service.
40.163 Responsibility of Secretary for service.

RULES OF PRACTICE

GENERAL

40.201 Commencement of proceeding.
40.202 Designation of record.
40.203 Caption of proceeding.

REFERRAL FOR HEARING

40.210 Referral to Administrative Law Judge.
40.211 Notice of hearing.
40.212 Supplemental Pleadings.

SERVICE OF PLEADINGS AND DOCUMENTS

40.220 Service of documents—manner of service.
40.221 Service upon the Department of Labor—number of copies.
40.222 Proof of service.
40.223 Computation of time.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE, GENERALLY

40.230 Authority of Administrative Law Judge.
40.231 Appearances; representation of parties.
40.232 Pleadings allowed.
40.233 Motions and requests.
40.234 Subpenas.
40.235 Witnesses and fees.
40.236 Depositions.
40.237 Prehearing conferences.
40.238 Consent findings and order.

HEARINGS

40.251 Hearing procedures generally.
40.252 Evidence at the hearing.
40.253 Official notice.
40.254 Transcripts.

POST-HEARING PROCEDURES

40.261 Proposals by the parties.
40.262 Decision and order of Administrative Law Judge.

RECORD

40.271 Retention of official record.
40.272 Certification of official record.

AUTHORITY: Sec. 14, 78 Stat. 924, and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16-75, 40 FR 55913; and Employment Standards Order 2-75, 40 FR 56743.

SOURCE: The provisions of this Part 40 appear at 41 FR 26820, June 29, 1976, unless otherwise noted.

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

GENERAL

§ 40.1 Purpose and scope.

(a) Congress, in enacting the Farm Labor Contractor Registration Act of 1963, as amended ("the Act"), found "that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally * * *." It therefore requires "that all persons engaged in the activity of contracting for the services of workers for agricultural employment comply with the provisions of this Act and all regulations prescribed hereunder by the Secretary of Labor."

(b) These regulations implement this finding and policy.

(c) The Act requires certain persons to obtain Certificates of Registration or Farm Labor Contractor Employee Identification Cards prior to performing any activities which constitute engagement in farm labor contracting within the meaning of the Act and prescribes the responsibilities for holders of such certificates or employee identification cards. In addition, persons to whom farm workers are furnished by farm labor contractors also have specific responsibilities.

(d) The Act empowers the Secretary of Labor to enforce the Act, conduct investigations, issue subpenas, and, in the case of designated violations of the Act, to impose sanctions, including the refusal to issue or to renew or the suspension or revocation of a Certificate of Registration or Farm Labor Contractor Employee Identification Card. As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than $1,000 for each violation, to deny a person the facilities and services available under the Wagner-Peyser Act, to seek a temporary or permanent restraining order in a Federal District Court, and to seek the imposition of criminal penalties on farm labor contractors or their employees who willfully and knowingly violate any provisions of the Act.

(e) This Subpart A sets forth the substantive regulations promulgated by the Secretary, pursuant to authority contained in the Act, relating to the issuance, renewal or replacement of a Farm Labor Contractor Certificate of Registration or a Farm Labor Contractor Employee Identification Card, the obligations and responsibilities of persons issued such certificates or identification cards, the obligations and responsibilities of persons furnished farm workers by farm labor contractors, the grounds for refusal to issue or to renew or for the revocation or suspension of such certificates or identification cards, and the sanctions authorized by the Act. It also provides for the imposition of civil money penalties for violation of the Act or regulations issued thereunder and indicates factors to be considered by the Secretary of Labor or authorized representative in assessing the amount of such penalty.

(f) Subpart B sets forth the rules of practice for administrative hearings relating to a refusal to issue or to renew, or the suspension or revocation of either document. It also outlines the procedure for filing a challenge to a proposed administrative action relative to violations and summarizes the methods provided for collection and recovery of the civil money penalty.

§ 40.2 Definitions.

For purposes of this part:

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means "any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports migrant workers (excluding members of the contractor's immediate family) for agricultural employment. This term shall not include—

(1) Any nonprofit charitable organization, public or nonprofit private educational instiuttion, or similar organization;

(2) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

(3) Any full-time or regular employee of any entity referred to in Paragraph (b)(1) or (2) of this section who engages in such activity solely for his employer on no more than an incidental basis;

(4) Any person who engages in such activity—

(i) Solely within a 25 mile intrastate radius of his permanent place of residence and

(ii) For not more than 13 weeks per year;

(5) Any person who engaged in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to—

(i) An agreement between the United States and such foreign nation or

(ii) An arrangement with the Government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for through the United States by an instrumentality of such foreign nation;

(6) Any full-time or regular employee of any person holding a Certificate of Registration under this Act;

(7) Any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers;

(8) Any custom combine, hay harvesting, or sheep shearing operation; or

(9) Any custom poultry harvesting, breeding, debeaking, sexing, or health service operation, provided the employees of the operation are not regularly required to be away from their domicile other than during their normal working hours.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term "agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(e) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

(f) The term "immediate family" of the farm labor contractor includes only—

(1) A spouse;

(2) Children, stepchildren, and foster children;

(3) Parents, stepparents, and foster parents; and

(4) Brothers and sisters.

(g) The term "Secretary" means the Secretary of the United States Department of Labor or the Secretary's duly authorized representative.

(h) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representative as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(i) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part.

(j)(1) The "Administrative Law Judge" means a person appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

(2) The "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, D.C. 20210.

(k) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(l) "Convicted" means that a final judgment of guilt has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(m) A "full-time or regular employee" who is required to obtain a Farm Labor Contractor Employee Identification Card is a person who performs farm labor contracting activities solely on behalf of

a farm labor contractor holding a valid Certificate of Registration and is not an independent contractor.

(n) A "Certificate of Registration" is the certificate issued by the Administrator which permits a person to engage in activities as a farm labor contractor.

(o) A "Farm Labor Contractor Employee Identification Card" is a card issued pursuant to this part permitting a full-time or regular employee of a person holding a valid Certificate of Registration to engage in activities as a farm labor contractor.

(p) A farm labor contractor is deemed an "owner" of a vehicle or housing facilities if said person has a legal or equitable interest therein.

(q) A farm labor contractor is in "control" of a vehicle or housing facilities regardless of the location of such facilities if said person is in charge of or has the power or authority to oversee, manage, superintend or administer the vehicle or housing, either personally or through an authorized agent or employee acting on behalf of said farm labor contractor, irrespective of whether compensation is paid for engaging in any of the aforesaid capacities.

(r) An "illegal alien" is any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

(s) A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

(t) The "Wagner-Peyser Act" is the Act of June 6, 1933 (48 Stat. 113; codified in 29 U.S.C. 49, *et seq.*), providing *inter alia* for the establishment of the U.S. Employment Service.

(u) The term "Employment Service of the various States" means a State agency vested with all powers necessary to cooperate with the U.S. Employment Service under the Wagner-Peyser Act.

§ 40.3 Certificate of Registration required.

Any person who desires to engage in any activity as a farm labor contractor, as defined in the Act and these regulations, must first obtain a Certificate of Registration authorizing each such activity.

§ 40.4 Farm Labor Contractor Employee Identification Card required.

Any person desiring to engage in recruiting, soliciting, hiring, furnishing, or transporting migrant workers solely on behalf of a farm labor contractor holding a valid Certificate of Registration, issued pursuant to the Act and these regulations, as a full-time or regular employee of such contractor must obtain a Farm Labor Contractor Employee Identification Card authorizing such activity or activities. Such identification card must be obtained prior to the employee's engagement in any of the aforementioned farm labor contractor activities and must show the name of the farm labor contractor for whom such activities are to be performed.

§ 40.5 Corporations, partnerships, associations and other organizations.

Any corporation, partnership, association or other organization which is a farm labor contractor within the meaning of the Act must obtain a Certificate of Registration. Any employee, including any officer or director of such a corporation, or partner or employee of a partnership, or member, officer, or other employee of an association or any other organization, who engage in farm labor contractor activities as a full-time or regular employee of such business organization, shall obtain a Farm Labor Contractor Employee Identification Card prior to so engaging.

§ 40.6 Public central registry.

The Administrator shall maintain a public central registry of all persons issued Certificates of Registration or Farm Labor Contractor Employee Identification Cards. All information filed therein shall be made available upon request in

[42 FR 22364, May 3, 1977]

accordance with Part 70 of this title. Requests for information concerning such registry may be directed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

§ 40.7 Compliance with State statutes.

This Act and the provisions contained in this part are intended to supplement State action and compliance with this Act or this part shall not excuse anyone from compliance with appropriate State law and regulation.

§ 40.8 Filing of applications, notices and documents.

Unless otherwise prescribed hereinafter, all applications, notices and other documents required or permitted to be filed by these regulations shall be filed in accordance with the provisions of §§ 40.220 through 40.223 of this part.

§ 40.9 Accuracy of information, statements and data.

Information, statements and data submitted in compliance with the provisions of the Act or this part are subject to Title 18, Section 1001, of the United States Code which provides:

§ 1001. *Statements or entries generally*

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

REGISTRATION REQUIREMENTS

§ 40.11 Filing of applications for Certificates of Registration.

(a) Applications for an initial or renewal Certificate of Registration are available at, and may be filed in, any office of the Employment Service of the various States.

(b) Registration under the Federal law is required whether or not licensing or registration of farm labor contractors is required under State law.

§ 40.12 Execution of application for Certificate of Registration.

The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD–258 as prescribed by the U.S. Department of Justice.

§ 40.13 Appointment of Secretary as agent for substituted service.

No Certificate of Registration shall be issued unless and until each applicant executes a writing which shall be subscribed and sworn to and which shall contain the following declaration:

I do hereby designate and appoint the Secretary of Labor, United States Department of Labor, as my lawful agent to accept service of summons in any action against me, at any and all times during which I have departed from the jurisdiction in which such action is commenced or otherwise have become unavailable to accept service, and under such terms and conditions as are set by the court in which such action has been commenced.

§ 40.14 Vehicle liability insurance.

Before any person may transport, within the meaning of the Act, migrant workers and their property in any vehicle which such person owns, operates, controls, or causes to be operated, compliance with the insurance or financial responsibility requirements of the Act must be shown by submitting the following, except to the extent that other arrangements pursuant to § 40.15 of this part have been approved by the Secretary:

(a) A completed Farm Labor Contractor vehicle liability certificate of insurance showing that the passenger hazard is included (as evidence of liability insurance which covers the workers while being transported). Such certificate represents that a vehicle liability

insurance policy, including a farm labor contractor liability endorsement, provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and regulations promulgated pursuant thereto. These amounts currently are as follows:

Insurance required for passenger equipment

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	$100,000	$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

The certificate also represents that the insurance was obtained from an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained.

(b) If the passenger hazard has been excluded from the farm labor contractor vehicle liability certificate of insurance referred to in paragraph (a) of this section applicant shall submit in addition to such certificate of insurance a completed farm labor contractor standard accident policy certificate of insurance as evidence of the issuance of a farm labor contractor standard accident policy. Said policy or policies shall be issued by an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained. The coverage afforded by such substitute insurance policy or policies shall not be less than the minimum amounts required in paragraph (a) of this section.

[41 FR 27612, July 2, 1976]

§ 40.15 Proof of financial responsibility in lieu of insurance.

Financial responsibility in lieu of insurance may be evidenced by a liability bond executed by the applicant, identified in the instrument as the "principal," together with a third party, identified in the instrument as the "surety," to assure payment of any liability up to $500,000 for damages to persons or property arising out of the applicant's ownership of, operation of, or causing to be operated any vehicle for the transportation of migrant workers in connection with the business, activities, or operations as a farm labor contractor. The "surety" shall be one which appears on the list contained in Treasury Department Circular 570, or which has been approved by the Secretary under the Employee Retirement Income Security Act of 1974 (Pub. L. 93–406). Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Audit Staff, Bureau of Government Financial Operations, Washington, D.C. 20226.

§ 40.16 Qualifications and eligibility of insurance carriers.

(a) No certificate of insurance issued by an insurance carrier in accordance with this part will be accepted, unless said insurance carrier meets the following requirements:

(1) The insurance carrier possesses and maintains surplus funds (policyholders' surplus) of not less than the minimum amount required by the U.S. Treasury Department, which minimum shall be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where in the judgment of the Administrator additional evidence with respect to such values is considered necessary; and

(2) The insurance carrier has a general policyholder's rating of B or better

in the current issue of "Best's—Insurance Reports—Fire and Casualty," or a "recommended" rating in the current issue of "Best's—Insurance Reports—Life."

(b) If the insurance carrier is not listed in the current issue of Best's, or, if listed, is not assigned a general policyholder's rating of B or better or "recommended" whichever is applicable, such carrier may request approval for eligibility by submitting to the Administrator its latest financial statement, as filed with the insurance department of its home State, on the standard form, with all exhibits and schedules included, and copies of reports of examination on conditions and affairs, as prepared by State supervisory authorities and such other information as the Administrator may request.

§ 40.17 Duration of insurance or liability bond.

Any insurance policy or liability bond which is obtained pursuant to this Act shall provide the required coverage for the full period during which the applicant for a Certificate of Registration shall be engaged in transporting migrant workers within the meaning of the Act during a calendar year.

§ 40.18 Limitations on cancellation of insurance or liability bond.

Any insurance policy or liability bond required by the Act or this part shall provide that it shall not be cancelled, rescinded, or suspended, nor become void for any reason whatsoever during such period in which the insurance or liability bond is required by the Act to be effective, except upon the expiration of the term for which it is written; or unless the parties desiring to cancel shall have first given thirty (30) days notice to the Administrator. The notice will include a statement setting forth the reason for cancellation, rescission, or suspension of such policy or bond. The notice shall be in writing and forwarded via certified or registered mail, addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210. Said thirty (30) days notice shall commence to run from the date notice is actually received by the Administrator.

§ 40.19 Authorization to transport migrant workers.

(a) No farm labor contractor may transport migrant workers within the meaning of the Act, unless said person shall submit—

(1) Written proof of insurance or financial responsibility, as required by §§ 40.14 and 40.15 of this part;

(2) A statement in the manner prescribed by the Secretary identifying each vehicle to be used by the applicant for the transportation of migrant workers and under the applicant's ownership or control; and

(3) Written proof that every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations promulgated by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation.

(b) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek authorization for such activity by—

(1) Submitting with the application for the initial Certificate of Registration a doctor's certificate on the prescribed form, and when applying for a renewal Certificate of Registration with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and

(2) Submitting evidence of an appropriate license to operate such vehicle.

§ 40.20 Authorization to house migrant workers.

(a) If an applicant for a Certificate of Registration is the owner of or will control facilities to be used for housing migrant workers during any period for which such a certificate is sought, said applicant shall submit—

(1) A statement identifying such facilities; and

(2) Written proof that the housing facilities comply with Federal safety and health standards as prescribed in either 20 CFR 620.4 or 29 CFR 1910.142 and applicable State standards of safety and health. Such written proof may be either a statement signed by the person to whom migrant workers are furnished by a farm labor contractor attesting that the housing facilities comply with Federal safety and health standards and also with applicable State safety and health standards, or a written statement containing an attestation with equal effect and signed by the applicant, or written statements issued by an authorized State and Federal Agency.

(b) Should the required written proof be unavailable at the time of filing an application, the applicant must attest in writing that migrant workers in the applicant's crew will not be housed in any facilities under the ownership or control of the applicant that do not conform to all applicable Federal and State safety and health standards. In such event, if otherwise eligible, the applicant will be issued a Certificate of Registration without a housing authorization. This certificate may be amended to include an authorization to house migrant workers at such time as the required written proof is forthcoming: *Provided*, That such proof as prescribed herein will have been submitted not more than sixty (60) days or less than thirty (30) days before actual use or occupancy of the housing facilities to the regional office which had issued the initial certificate.

§ 40.21 Expiration and renewal of Certificate of Registration.

A Certificate of Registration, once issued, may not be transferred or assigned and shall be effective for the remainder of the calendar year during which it was issued unless suspended or revoked. In any case in which an application for renewal of a valid Certificate of Registration submitted in accordance with the requirements of §§ 40.11 through 40.20 of these regulations has been made on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a farm labor contractor under an existing certificate shall not expire until the renewal application shall have been finally determined by the Administrator.

§ 40.22 Replacement of Certificate of Registration.

If a Certificate of Registration is lost or destroyed, a duplicate Certificate of Registration may be obtained by the submission to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration of a written statement explaining its loss or destruction, indicating where the original application was filed and requesting that a duplicate be issued.

Employee Identification

§ 40.31 Filing of application for Farm Labor Contractor Employee Identification Card.

(a) Applications for an initial or renewal Farm Labor Contractor Employee Identification Card are available at, and may be filed in, any office of the Employment Service of the various States.

(b) An Employee Identification Card issued under Federal law is required whether or not registration, licensing or identification of such person is required under State law.

§ 40.32 Execution and Content of application for Farm Labor Contractor Employee Identification Card.

(a) The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD–258 as prescribed by the U.S. Department of Justice.

(b) If a full-time or regular employee of a farm labor contractor is to drive any vehicle for the transportation of migrant workers in connection with the business activities or operations of a farm labor contractor, such employee shall seek authorization for such activity

by (1) submitting with the application for the initial Employee Identification Card a doctor's certificate on the prescribed form, and when applying for a renewal of such card with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

§ 40.33 Authorized use of Farm Labor Contractor Employee Identification Card.

(a) Any employee holding a valid Farm Labor Contractor Employee Identification Card described in § 40.4 of this part is authorized to engage in the activity or activities stated on such card solely on behalf of the employee's named employer who is a holder of a valid Certificate of Registration without obtaining a Certificate of Registration as a farm labor contractor in such employee's own name.

(b) The authorization provided by Section 4(b) of the Act and paragraph (a) of this section shall continue as long as the Farm Labor Contractor Employee Identification Card—

(1) Remains valid;

(2) Is in the immediate personal possession of such holder when engaging in any activity authorized thereby; and

(3) Is exhibited to any person with whom said holder undertakes to deal in such capacity.

§ 40.34 Replacement of Farm Labor Contractor Employee Identification Card, lost card or change of employment.

(a) If a Farm Labor Contractor Employee Identification Card is lost or destroyed, a duplicate card may be obtained by submitting to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration, a written statement explaining its loss or destruction, indicating where the original application was filed, the name and number of the farm labor contractor by whom employed, and requesting that a duplicate be issued.

(b) A Farm Labor Contractor Employee Identification Card is valid only during the period in which the holder is a full-time or regular employee of the registered farm labor contractor named on the identification card. If, prior to the expiration of the identification card, the holder, through a change in employment, should become a full-time or regular employee of a different registered farm labor contractor, a replacement identification card which names the new employer may be obtained by submitting to the regional office that issued the original card or to any regional office of the Wage and Hour Division, Employment Standards Administration a written statement that includes the date of the change in employment status and the name, home address, current address and certificate registration number of the new employer.

(c) Any change of employment referred to in paragraph (b) of this section must be reported immediately.

§ 40.35 Expiration and renewal of Farm Labor Contractor Employee Identification Card.

(a) A Farm Labor Contractor Employee Identification Card, once issued, may not be transferred or assigned and shall expire on December 31 of the year of issuance, unless suspended or revoked prior thereto. The holder of such a card may request renewal of such card by executing and filing in any office of the Employment Service of the various States, the following—

(1) An application for renewal;

(2) Upon request, a completed U.S. Department of Justice Fingerprint Card, Form FD–258; and

(3) A prescribed doctor's certificate and appropriate operator's license in accordance with § 40.32(b), if such applicant is to be engaged as a driver for transporting migrant workers.

(b) In any case in which an application for renewal of an Employee Identification Card has been submitted in accordance with the requirements of

paragraph (a) of this section on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a full-time or regular employee of a holder of a Certificate of Registration shall not expire until the renewal application shall have been finally determined by the Administrator.

ACTION ON APPLICATIONS

§ 40.41 Office of filing, action.

Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed at any of the offices designated in §§ 40.11 and 40.31 respectively shall be transmitted promptly to the appropriate regional office of the Wage and Hour Division, Employment Standards Administration.

§ 40.42 Issuance, refusal to issue, suspension, revocation or refusal to renew: Farm Labor Contractor Certificate of Registration or Farm Labor Contractor Employee Identification Card.

(a) The Administrator or authorized representative shall:

(1) Review each application transmitted by the offices of filing and determine whether such application is complete and properly executed.

(2) When appropriate, notify the applicant in writing of any incompleteness or error in execution of an application and return the application for correction and completion.

(3) Determine after appropriate investigation whether the applicant has complied with the requirements of the Act and this part and if appropriate issue a Certificate of Registration or a Farm Labor Contractor Employee Identification Card authorizing the performance of any or all activities permitted under the Act.

(b) The Administrator, upon notice and hearing in accordance with Subpart B of this part, may refuse to issue, may suspend, revoke or refuse to renew a Certificate of Registration or a Farm Labor Contractor Employee Identification Card when an investigation presents grounds as set forth in § 40.63 of this part for such action.

[41 FR 27318, July 2, 1976]

OBLIGATIONS AND PROHIBITED ACTS

§ 40.51 Obligations of a farm labor contractor.

The Act and these regulations imposes the following obligations on all farm labor contractors:

(a) The farm labor contractor shall obtain an appropriate Certificate of Registration before engaging in any activities of a farm labor contractor.

(b) The farm labor contractor shall provide the Secretary with a notice of each and every address change within 10 days after such change of address.

(c) Whenever a farm labor contractor obtains a vehicle or learns of the intended use of a vehicle for the transportation of migrant workers by said contractor and such vehicle or vehicles are under the contractor's ownership or control, said contractor shall, within 10 days after he obtains or learns of such intended use—

(1) Furnish a statement which shall identify each such vehicle;

(2) Provide written proof that each such vehicle conforms to all applicable Federal and State safety and health standards; and

(3) Furnish written proof of insurance or financial responsibility for such vehicle or vehicles to the office which originally had issued the Certificate of Registration.

(d) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek advance authorization for such activity by (1) submitting on a prescribed form a doctor's certificate with the application for the initial Certificate of Registration and when applying for a renewal certificate with authorization to drive, a new completed doctor's certificate, if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

(e) If the farm labor contractor obtains housing facilities, or learns that certain facilities will be used for housing migrant workers and such facilities are under the ownership or control of the contractor, said contractor shall provide the documentation as prescribed in paragraph (a) of § 40.20 to the regional office which had issued the initial certificate. This document shall be submitted within 10 days after the contractor obtains or learns of the intended use of such real property and prior to its actual use.

(f) A registered farm labor contractor shall carry the Certificate of Registration at all times while engaging in farm labor contracting activities and shall exhibit the same to all persons with whom the contractor intends to deal as a farm labor contractor, including, but not limited to, workers, growers, processors, and State Employment Agency personnel, prior to so dealing.

(g) The farm labor contractor shall ascertain and disclose to the worker to the best of the contractor's knowledge and belief at the time the worker is recruited, the following information in writing, in a language and manner understandable to such worker on a form such as WH–416 (information on wages and working conditions)—

(1) The area of employment;

(2) The crops and operations on which the worker may be employed;

(3) The transportation, housing, and insurance to be provided the worker;

(4) The wage rates to be paid the worker;

(5) The charges to be made by the farm labor contractor for such contractor's services;

(6) The period of employment;

(7) The existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment; and

(8) The existence of any arrangements between the farm labor contractor and any owner, proprietor, or agent of any commercial or retail establishment in the area of employment, under which the contractor is to receive a commission or any other benefit resulting from any sales provided to such establishment from the migrant workers.

(h) Upon arrival at a given place of employment, the farm labor contractor shall post in a conspicuous place a written statement of the terms and conditions of that employment in a language in which the workers are fluent and written in a manner understandable by such workers.

(i) In the event the contractor owns, manages, supervises, or otherwise controls the housing facilities, such person shall post in a conspicuous place the terms and conditions of occupancy in a language in which the worker is fluent and in a manner understandable by such worker.

(j) The farm labor contractor shall provide to each migrant worker engaged in agricultural employment with whom the contractor deals in a capacity as a farm labor contractor a statement of all sums paid to such contractor (including sums received on behalf of such migrant worker) on account of the labor of such migrant worker. The farm labor contractor shall additionally provide each such worker with an itemized statement showing all sums withheld by said contractor from the amount received on account of the labor of such worker, and the purpose for which such sums were withheld.

(k) In the event the farm labor contractor pays the migrant workers engaged in agricultural employment, either on behalf of such contractor or on behalf of another person, such contractor shall also keep payroll records which shall show for each worker in each workweek of the payroll period, name in full, home address, total earnings, itemized statement of all withholdings or deductions from earnings, net earnings, the hours worked each day, the total hours worked each workweek, and hourly rate of pay. If the worker is employed on a time basis other than hourly, this record shall also show the time period constituting the basis for payment. In addition, if the

worker is employed on a piece rate basis, the payroll records shall show the number of units of work performed and the rate per unit.

(l) The farm labor contractor shall provide to the person to whom a migrant worker is furnished all information and records required to be kept by such contractor under paragraph (k) of this section and all information required to be provided to any migrant worker under paragraph (j) of this section.

(m) The farm labor contractor shall promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to said farm labor contractor by any farm operator for such purposes.

(n) A farm labor contractor shall refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.

(o) The farm labor contractor shall refrain from violating or from taking any action in violation of Section 5(b) of the Act.

(p) A farm labor contractor shall refrain from recruiting, employing or utilizing with knowledge the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment, and must evidence an affirmative showing of a *bona fide* inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States. Such affirmative showing will be deemed to be met by written documentation that reliance in good faith was based on any of the following:

(1) Acceptable evidence of United States citizenship—

(i) Birth certificate.

(ii) Certificate of citizenship.

(iii) Certificate of naturalization.

(iv) U.S. identification card (INS—Form I–179 or I–197).

(v) Passport issued by United States identifying person as citizen of United States.

(vi) Consular report of birth (State Department Form FS–240).

(2) INS—Form I–151, Alien Registration Receipt Card (green card), which is proof that the alien has been lawfully admitted to the United States for permanent residence and may accept any employment in this country without restriction. It is a green or blue-green wallet-sized laminated card, bearing a photograph of the alien and contains information concerning his alien registration number, date of admission as an immigrant, birth date and sex.

(3) INS—Form I–94 (with or without a passport)—

(i) INS—Form I–94 bearing an employment authorization consisting of the words "Employment Authorized."

(ii) INS—Form I–94 bearing the designation of H–2, as endorsed on the front or back of the form, authorizing a person to engage only in agricultural employment during the period of such person's authorized stay in the United States.

(q) A farm labor contractor is responsible for assuring that every full-time or regular employee employed by such Contractor has obtained either a Farm Labor Contractor Employee Identification Card or a Certificate of Registration, as required by the Act and these regulations, prior to such employee's engagement in any activity enumerated in Section 3(b) of the Act.

§ 40.52 Obligations of person holding a valid Farm Labor Contractor Employee Identification Card.

Any person holding a valid Farm Labor Contractor Employee Identification Card in accordance with the provisions of §§ 40.31 through 40.35 of this part is subject to and is required to comply with all of the provisions of the Act and these regulations to the same extent as if said person had been required to obtain a Certificate of Registration in such person's own name.

§ 40.53 Obligations of grower, processor, and other user.

Any person who is furnished any migrant worker by a farm labor contractor shall—

(a) Maintain all payroll records required to be kept by such person under Federal law;

(b) Obtain and maintain records containing the information required to be provided to such person by the farm labor contractor under Section 6(e) of the Act and § 40.51(1) of this part with respect to migrant workers paid by a farm labor contractor; and

(c) determine before engaging the services of a farm labor contractor to supply farm labor that the contractor possess a Certificate of Registration that is in full force and effect at the time he contracts with the farm labor contractor.

§ 40.54 Discrimination prohibited.

(a) Any person is deemed to have violated the Act if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any manner discriminates against any migrant worker who for just cause has—

(1) filed a complaint with reference to this Act with the Secretary of Labor; or

(2) instituted or caused to be instituted any proceeding under or related to this Act; or

(3) has testified or is about to testify in any proceeding under or related to this Act; or

(4) has exercised on behalf of others any right or protection afforded by this Act to such persons.

(b) A complaint alleging such discriminatory conduct may be filed with the Secretary within 180 days after the happening of such unlawful acts.

VIOLATIONS AND SANCTIONS

§ 40.61 Report of violations, investigations, issuance of subpenas.

(a) Any person may report a violation of the Act or regulations of this part to the Administrator by advising any local office of the Employment Service of the various States, or any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any other representative of the Administrator. The office or person receiving such a report shall refer it to the regional office of the Wage and Hour Division, Employment Standards Administration for the region in which the reported violation is alleged to have occurred and the Administrator shall direct that an appropriate investigation of any alleged violation shall be made.

(b) The Administrator, upon receipt of a complaint or upon his own initiative, may investigate and gather data respecting such case, may enter and inspect such places and records (and make copies thereof), may question persons being investigated or proceeded against, may issue subpenas requiring the attendance and testimony of witnesses or the production of any documentary or other evidence from any place in the United States at any designated place of hearing as may be appropriate, to determine whether a violation of this Act or this part has been committed. In connection with the foregoing, the said officer or his agent may administer oaths and affirmations, examine witnesses and receive evidence.

(c) In case of disobedience to a subpena, the aid of a Federal District Court which is authorized to issue an order requiring the person or business organization to obey such subpena may be invoked.

(d) Investigations are to be conducted in a manner which protects the confidentiality of any complainant or other person who provides information on a confidential basis, in accordance with Part 70 of this title.

§ 40.62 Sanctions.

(a) Violations of the Act or regulations thereunder may result in the imposition of civil injunctive relief or, in the case of willful and knowing violations by a farm labor contractor or employee thereof, the imposition of criminal sanctions. In addition, civil money

penalties of not more than $1,000 for each violation may be assessed administratively. Further, administrative action may be taken to suspend, revoke, refuse to issue or renew a Certificate of Registration or Employee Identification Card, and to deny the facilities and services afforded by the Wagner-Peyser Act. The taking of any one of the above actions shall not be a bar to the concurrent taking of any other action enumerated in this section.

(b) If, upon the receipt of a complaint in which a worker has alleged discriminatory action of a type specified in section 13(a) of the Act and § 40.54 of this part, the ensuing investigation results in a determination that such discriminatory conduct had been committed, an action shall be instituted in an appropriate Federal District Court to restrain such violation and to seek such other relief as may be appropriate, including rehiring or reinstatement of the worker, with backpay, or damages.

§ 40.63 Certificates of Registration and Farm Labor Contractor Employee Identification Cards—grounds for revocation or suspension or refusal to issue or to renew.

Certificates of Registration and Farm Labor Contractor Employee Identification Cards may be revoked or suspended, or issuance or renewal thereof refused, if the applicant or registrant—

(a) Fails or refuses to comply with any provisions of § 40.51 of this part;

(b) Knowingly has made any misrepresentations or false statements in an application for a Certificate of Registration or for Farm Labor Contractor Identification Card or any renewal thereof;

(c) Knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment;

(d) Has failed, without justification, to perform agreements entered into or arrangements with farm operators;

(e) Has failed, without justification, to comply with the terms of any working arrangements that the applicant or registrant has made with migrant workers;

(f) Has failed to show financial responsibility satisfactory to the Administrator or has failed to keep in effect a policy of insurance as required by Section 5(a)(2) of the Act;

(g) Has recruited, employed or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;

(h) Has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered with a period of 5 years preceding the action of the Secretary under this paragraph;

(i) Has failed to comply with rules and regulations as required by §§ 40.19 and 40.20 of this part;

(j) Knowingly employs or continues to employ any person, to whom subsection (b) of Section 4 of the Act applies, who has taken any action, except for that listed in paragraph (f) of this section, which could be used by the Administrator under this section to refuse to issue a Certificate of Registration;

(k) Is not in fact the real party in interest in any such application for a Certificate of Registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a Certificate of Registration, has had a Certificate of Registration suspended or revoked, or who does not presently qualify for a Certificate of Registration;

(l) Has failed to furnish, or refused to allow a designated representative of the Administrator to obtain appropriate information necessary to make a determination of eligibility for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card as provided by Sections 5(b) and 7 of the Act;

(m) Has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent any such vehicle or real property has come within the ownership or control of such farm labor contractor;

(n) Has intimidated, threatened, restrained, coerced, blacklisted, discharged, or in any manner discriminated against any migrant worker who has filed a complaint or instituted or caused to be instituted any proceeding or has exercised any right or protection afforded by this Act, whether such action is on behalf of said worker or on behalf of others; or

(o) Has failed to comply with any of the provisions of this Act or any regulations issued thereunder.

§ 40.64 Denial of facilities and services of Wagner-Peyser Act.

(a)(1) Upon determination by the Secretary that a person has knowingly engaged the services of a farm labor contractor who did not possess a valid Certificate of Registraiton as required by the Act, such person may be denied the facilities and services authorized by the Wagner-Peyser Act for a period of up to 3 years.

(2) Evidence that a farm labor contractor possesses a Certificate of Registration that is in full force and effect may consist of—

(i) The Certificate of Registration submitted by the farm labor contractor; or

(ii) A confirmation of such fact obtained from the Secretary's public central registry of all persons issued Certificates of Registration.

(3) If an investigation results in a finding of violation, the Secretary shall notify any persor charged with such violation of any proposal to deny such person the facilities and services available under the Wagner-Peyser Act, and of such person's right to request a hearing, as prescribed in Subpart B of this part.

(b) If a farm labor contractor fails or refuses to exhibit a valid Certificate of Registration to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing, as required by Section 6(a) of the Act and § 40.51(f) of this part, the contractor shall be denied the facilities and services authorized by the Wagner-Peyser Act and shall also be subject to such penalties as are provided in the Act or in this part.

§ 40.65 Civil money and other administrative penalties.

(a) Where violations bv any persons of the Act or any regulations promulgated thereunder have been disclosed and have resulted in proposals to refuse renewal or issuance or to suspend or to revoke a Certificate of Registration or a Farm Labor Contractor Employee Identification Card or to assess a civil money penalty or to deny persons the services and facilities of the Wagner-Peyser Act, any one so charged is entitled to an opportunitv for a proceeding before an administrative law judge as described in Subpart B of this part.

(b) Any assessment of a civil money penalty shall be based on the available evidence and shall take into consideration among others, one or more of the following factors:

(1) Previous history of violation or violations.

(2) The number of migrant workers affected by the violation or violations.

(3) The gravity of the violation or violations.

(4) Efforts made in good faith to comply with the Act.

(5) Explanation of person charged with the violation or violations.

(6) Assurances of future compliance, taking into account the public health, interest or safety.

(7) Financial gain on the part of the violator or financial losses to worker or workers.

§ 40.66 Waiver of rights.

Any agreement by an employee purporting to waive or modify any rights inuring to said person under this Act or rules promulgated thereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or rules promulgated thereunder.

Subpart B—Administrative Proceedings

General

§ 40.101 Establishment of procedures and rules of practice.

This subpart codifies, amends, and establishes the procedures and rules of practice necessary for the enforcement of the Act.

§ 40.102 Applicability of procedures and rules.

(a) The procedures and rules contained herein establish the administrative processes necessary for a determination:

(1) To refuse to issue or renew, or to suspend or revoke, either a "Certificate of Registration" or a "Farm Labor Contractor Employee Identification Card";

(2) To impose a civil money penalty for any violation of the Act or the provisions of Subpart A of these regulations;

(3) To deny the facilities and services authorized by the Wagner-Peyser Act; and

(4) To the filing of a complaint alleging discriminatory conduct.

(b) The procedures and rules contained herein also summarize the methods to be utilized in the assessment, collection, and recovery of any civil money penalties administratively assessed under the Act and these regulations.

(c) Finally, the procedures and rules contained herein specify the administrative responsibility resulting from section 5(a)(5) of the Act relating to the service of summons upon the Secretary on behalf of farm labor contractors.

Procedures Relating to Hearings on Refusal To Issue or Renew, or To Suspend or Revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card

§ 40.111 Refusal to issue or renew, or to suspend or revoke—written notice required.

(a) Whenever the Administrator finds and determines that a Certificate of Registration or a Farm Labor Contractor Employee Identification Card should be suspended or revoked or that issuance or renewal thereof should be refused, the applicant or holder of the Certificate of Registration or identification card shall be notified in writing of such determination.

(b) In cases involving a determination relating to a farm labor contractor, written notice shall also be given to every holder of an Employee Identification Card which was issued or applied for on behalf of such farm labor contractor.

(c) In cases involving a determination relating to a Farm Labor Contractor Employee Identification Card, written notice shall also be given to the holder of the Certificate of Registration under which the identification card was issued or applied for.

§ 40.112 Contents of notice.

The notice referred to in § 40.111 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the applicant or holder of the right to request a hearing on the determination to refuse to issue, or renew or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card.

(c) Apprise the applicant or holder of the time and method for making such request, and the procedures relating

thereto, in accordance with the provisions of § 40.113.

(d) Inform the applicant or holder that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

§ 40.113 Request for hearing.

(a) Any applicant or holder desiring to request an administrative hearing on the determination to refuse to issue or renew, or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.111.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

PROCEDURES RELATING TO HEARINGS ON CIVIL MONEY PENALTIES

§ 40.121 Assessment of civil money penalty, written notice required.

Whenever the Administrator finds that any person has violated any provision of the Act or these regulations and has determined that a civil money penalty shall be assessed, a written notification of such determination shall be served upon the person against whom such penalty has been assessed.

§ 40.122 Contents of notice.

The notice referred to in § 40.121 shall:

(a) Set forth the determination of the Administrator and shall include:

(1) A description of each violation for which a civil money penalty has been assessed; and

(2) The amount of civil money penalty assessed for each violation identified in subparagraph (1) above.

(b) Apprise the affected person or persons of the right to request a hearing on the determination of the assessment of the civil money penalty or penalties referred to in § 40.121.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.123.

§ 40.123 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination to assess civil money penalties shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than thirty (30) days after the service of the notice referred to in § 40.121.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected person's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.124 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a Federal District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person charged with such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of "Wage and Hour Division,

Labor." The remittance shall be delivered or mailed to the Administrator, either in Washington, D.C., or to the Regional Wage and Hour Division Office located in the area in which the violations occurred.

PROCEDURES RELATING TO HEARINGS FOR DENIAL OF WAGNER-PEYSER FACILITIES

§ 40.131 Denial of facilities and services authorized by Wagner-Peyser Act.

Whenever the Administrator finds and determines that any person should be denied the facilities and services authorized by the Wagner-Peyser Act for violations of the Farm Labor Contractor Registration Act (see § 40.64 of Subpart A) or these regulations, that person shall be notified in writing of such determination and the length of such denial.

§ 40.132 Contents of notice.

The notice referred to in § 40.131 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the affected person or persons of the right to request a hearing on the determination to deny the Wagner-Peyser Act facilities and services referred to in § 40.131.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.133.

§ 40.133 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination referred to in § 40.131 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.131.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.134 Automatic denial of facilities and services authorized by Wagner-Peyser Act—duration.

In accordance with section 6(a) of the Act, the facilities and services authorized by the Wagner-Peyser Act are denied to any farm labor contractor or holder of a Farm Labor Contractor Employee Identification Card issued under this Act, during the period and whenever such person fails to exhibit a valid Certificate of Registration or Employee Identification Card to a representative of the employment service.

PROCEDURES RELATING TO THE FILING OF A COMPLAINT ALLEGING DISCRIMINATORY CONDUCT

§ 40.141 Discriminatory conduct—complaint.

Any worker who believes that he or she has been discriminated against within the meaning of section 13 of the Act and § 40.54, may file a complaint with the Secretary within one-hundred and eighty (180) days of such discriminatory act.

FORM AND TIME OF REQUEST FOR HEARING

§ 40.151 Form of request.

No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(a) Be typewritten or legibly written;

(b) Be directed to the issue or issues stated in the notice of determination giving rise to such request;

(c) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(d) Be signed by the person making the request or by an authorized representative of such person; and

(e) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

§ 40.152 Time for making request.

Any request for a hearing pursuant to these regulations shall be made within the time prescribed by §§ 40.113, or 40.123, or 40.133, of this subpart, as may be appropriate to the matter in controversy, except that if such request is filed pursuant to a notice involving a combination of any of the foregoing, any one of which requires thirty (30) days notice, the time for such notice shall be thirty (30) days after issuance of such notice of determination.

PROCEDURES RELATING TO SUBSTITUTE SERVICE

§ 40.161 Change of address.

(a) Pursuant to sections 5(a)(5) and 5(d) of the Act and §§ 40.13, 40.51(b), and 40.52, every holder of a certificate or identification card shall notify the Administrator within ten (10) days after each and every change of address.

(b) The notification required in paragraph (a) shall be in writing, by certified mail, and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(c) Such change of address shall be deemed effective upon receipt by the Administrator, unless a later date is specified in the notice.

§ 40.162 Substituted service.

(a) Pursuant to section 5(a)(5) of the Act and § 40.13, the Secretary shall accept service of summons for any person issued and holding a valid Certificate of Registration or a valid Employee Identification Card whenever such person has departed from the jurisdiction in which the action giving rise to the service of summons was commenced or whenever such person has become otherwise unavailable to accept service.

(b) Acceptance of service of summons referred to in paragraph (a) shall be under such terms and conditions as are set by the court in which such action has been commenced.

(c) To be effective, such service shall be made by delivery personally or by certified mail to the Administrator of the Wage and Hour Division, either in Washington, D.C., or to the Office of the Administrator, located in the area in which the action has been commenced.

§ 40.163 Responsibility of Secretary for service.

Upon receipt of any substituted service, as described in § 40.162, the same shall be forwarded by certified mail to the last known address furnished by the person for whom service is accepted. Such mailing shall complete the Secretary's responsibility in connection with the substituted service requirement of the Act.

RULES OF PRACTICE

GENERAL

§ 40.201 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely "request for hearing" filed in accordance with §§ 40.113, 40.123, 40.133, or 40.152.

§ 40.202 Designation of record.

(a) Each administrative proceeding instituted under the Act and these regulations shall be identified of record by a number preceded by the letters "FLCRA" and followed by one or more of the following four designations:

(1) Proceedings involving the "refusal to issue or renew, or to suspend, or revoke, a Certificate of Registration or an Employee Identification Card" provided for in §§ 40.111 through 40.113 shall be designated as "R."

(2) Proceedings involving the "assessment of civil money penalties" provided for in §§ 40.121 through 40.124 shall be designated as "P."

(3) Proceedings involving the "denial of facilities and services authorized by the Wagner-Peyser Act" provided for in §§ 40.131 through 40.133 shall be designated as "W."

(b) Proceedings involving a combination of the actions designated in (a) (1) through (a) (3) of this section shall carry each and every such designation as may be appropriate.

(c) The number, letters, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 40.203 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In The Matter of_____, respondent.

(b) For the purposes of such administrative proceeding the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 40.210 Referral to Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing filed pursuant to and in accordance with § § 40.113, 40.123, 40.133, or 40.152, the Administrator, by Order of Reference, shall promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a final determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment as may be permitted under these regulations.

(b) A copy of the Order of Reference referred to herein, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in § 40.220.

(c) The Chief Administrative Law Judge, upon receipt of the Order of Reference, shall promptly designate an Administrative Law Judge to conduct the proceeding, which shall be in accordance with section 554 of Title 5, United States Code, and the provisions of this part.

§ 40.211 Notice of hearing.

The Administrative Law Judge to whom the matter is referred shall, within ten (10) days following such referral, notify the parties by certified mail of a day, time, and place set for hearing thereon or for a prehearing conference to be held as provided in § 40.237, or both. No date earlier than fifteen (15) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties. Service of such notice shall be made upon the parties as provided in § 40.220.

§ 40.212 Supplemental pleadings.

If upon review of the notice of administrative determination or the request for hearing thereon, it appears to either party that such document, as originally drafted, requires supplementation in order to clarify the issues for a hearing thereon, an amended notice of administrative determination may be filed by the Secretary or an amended response thereto may be filed by respondent, as the case may be. Such supplemental pleading shall be filed with the Chief Administrative Law Judge, with proof of service upon the opposing party, at least ten (10) days prior to the date set for hearing or for a prehearing conference by the Administrative Law Judge before whom the matter is pending, unless the time for filing such document is extended by the judge. If an amended

notice of administrative determination is filed by the Secretary, the respondent shall be entitled to file with the Chief Administrative Law Judge an amended response in response within five (5) days after service upon the respondent of such amended notice. No response is required, but if filed, it must be signed either by the person answering or responding or by the representative of such person.

SERVICE OF PLEADINGS AND DOCUMENTS

§ 40.220 Service of documents—manner of service.

(a) *General.* Any pleading, notice, or other document required by this Subpart B to be filed or served on any person shall be filed or served either personally upon such person or by mail to the last known address of such person. If done by certified mail, filing or service is complete upon mailing. If done by regular mail, filing or service is complete upon receipt by addressee.

(b) *Upon parties.* Service of any pleading, notice, or other document by mail upon an applicant for or a holder of a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall be made at the address designated either on such applicant's or holder's most recent application, or on any subsequent written communication to the Administrator as provided in §§ 40.151 or 40.161.

(1) Service upon any other party to a proceeding under the Act or these regulations of a pleading or document shall also be made by delivering a copy or mailing a copy to the last known address. When any party is represented by an attorney, service shall be made upon the attorney.

(c) *Additional time for service by mail.* Whenever a party to any proceeding under this part has a right or is required to take any action within a prescribed period after the service of a pleading, notice, or other document upon such party, and the pleading, notice, or document is served upon said party by certified mail, five (5) days shall be added to the prescribed period.

§ 40.221 Service upon the Department of Labor—number of copies.

An original and four copies of all pleadings and other documents required for any administrative proceeding provided herein shall be filed with the Department of Labor, the original and a copy thereof to the Chief Administrative Law Judge, a copy to the Administrative Law Judge assigned to the proceeding, a copy to the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, and a copy to the attorney representing the Department in the proceeding.

§ 40.222 Proof of service.

The filing of a certificate by the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service, shall be proof thereof.

§ 40.223 Computation of time.

(a) Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for filing any pleading, notice, or document under this part, but when the filing time expires on such a day, the period shall be extended to include the next following day which is not a Saturday, Sunday, or a Federal legal holiday.

(b) In computing any period of time prescribed or permitted by this part, the day of the act, event, notice, or default from which the designated period of time begins to run shall not be included.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE, GENERALLY

§ 40.230 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas upon proper applications as provided in § 40.234;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act;

(10) To exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary by Section 7 of the Act as are necessary and appropriate therefor; and

(11) To take any action authorized by the rules of civil procedure for the United States District Court, issued and from time to time amended pursuant to 28 U.S.C. 2072, as deemed necessary and appropriate, unless otherwise proscribed herein.

(b) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion, and such ruling shall be final.

(3) In the event of disqualification of an Administrative Law Judge as provided in paragraph (c)(1) or (c)(2) of this section, the Chief Administrative Law Judge shall refer the matter to another Administrative Law Judge for further proceedings.

§ 40.231 Appearances; representation of parties.

The Associate Solicitor for General Legal Services and other counsel, as designated, shall represent the Secretary in any proceeding under these regulations. Respondents shall have the right to appear by or with counsel of their choice, who shall qualify for such representation as provided in 5 U.S.C. 500(b). If not represented by counsel, respondents may appear in person or through authorized agents and may submit necessary documents with their own signatures.

§ 40.232 Pleadings allowed.

All matters other than the notice of administrative determination and a request for hearing shall be presented by motion.

§ 40.233 Motions and requests.

Motions or requests shall be in writing, filed with the Chief Administrative Law Judge, and copies served upon the other parties to the proceeding, except that motions or requests made during the course of any hearing or appearance before the Administrative Law Judge shall be filed with such judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the judge's decision as provided in § 40.262.

§ 40.234 Subpenas.

All applications for subpenas *ad testificandum* and subpenas *duces tecum*

shall be made in writing to the Administrative Law Judge. Applications for subpenas *duces tecum* shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 40.235 Witnesses and fees.

(a) The Administrative Law Judge, either at the request of the parties or upon the judge's own motion, may request persons to appear and testify as witnesses, where such action is deemed necessary to serve the purposes of the hearing.

(b) Witnesses subpenaed by any party or by the Administrative Law Judge shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 40.236 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written questions before any person designated by the Administrative Law Judge and having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time and place it is to be taken; the name and address of the person before whom the deposition is to be taken; the name and address of each witness from whom a deposition is to be taken; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order shall be given for the taking of a deposition, but this shall not be less than five (5) days' written notice when the deposition is to be taken within the United States and not less than twenty (20) days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. Thereafter, such officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by certified mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

§ 40.237 Prehearing conferences.

(a) Upon motion of either party, or when deemed appropriate by the Administrative Law Judge, the judge may direct the parties or their authorized representatives to meet with the judge for a conference to consider:

(1) Simplification or clarification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;

(3) Stipulations, admissions of fact, and admissions of contents and authenticity of documents;

(4) Limitation of the number of witnesses, including expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The Administrative Law Judge shall issue a prehearing order showing the matters disposed of by order and by

agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such order.

§ 40.238 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

Hearings

§ 40.251 Hearing procedures generally.

(a) Pursuant to notice given as provided in § 40.211, the designated Administrative Law Judge shall hold such hearings, as provided in this part, as are necessary for determination of the issue or issues submitted for decision, exercising the powers set forth in § 40.230 and conducting the proceeding in accordance with the provisions of 5 U.S.C. 554. In any such hearing, the burden of supporting the Administrator's determination shall be upon the Secretary. Except as may be determined otherwise by the Administrative Law Judge, counsel for the Secretary shall proceed first at the hearing. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) For good cause shown, the Administrative Law Judge may permit any interested party or person to intervene at a hearing. A petition to intervene shall be in writing and shall state briefly and with particularity the petitioner's relationship to and interest in the matters involved in the proceedings and the nature of the presentation to be made.

(c) If any party to the proceeding, after being properly served with notice of the hearing, should fail to appear at the hearing, the matter may be set for further hearing upon notice to all parties, but a party who is present shall first have an election to present such party's evidence in whole or such portion thereof sufficient to make a *prima facie* case, in which event the Administrative Law Judge may make a decision without further hearing. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

(d) Contemptuous conduct at any hearing shall be grounds for exclusion from the hearing.

§ 40.252 Evidence at the hearing.

(a) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(b) *Objections.* A party who objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. A formal exception to an adverse ruling is not required.

(c) *Failure or refusal of witness to appear or answer.* The failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper shall be grounds for the action provided in sections 49 and 50 of Title 15, United States Code, pursuant to the provisions of section 7 of the Act, and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 40.253 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice or which concerns matters as to which the Department, by reason of its functions, is presumed to be expert: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 40.254 Transcripts.

Hearings shall be stenographically reported.

POST-HEARING PROCEDURES

§ 40.261 Proposals by the parties.

At the conclusion of the hearing, the Administrative Law Judge shall afford any party a reasonable opportunity, but not less than fifteen (15) days, upon request, to file with such officer proposed findings of fact, conclusions of law, and a proposed order together with a supporting brief. There may be included statements of the reasons for any such proposed findings of fact, conclusions of law, and the proposed order, including a reference to the portions of the record and to the authorities relied upon in support of each proposal. Such proposals shall be accompanied by a certification that service of the proposals has been made upon all other parties.

§ 40.262 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers provided for in § 40.231, and the judge's decision in the matter shall become the final decision in the administrative process, as provided in the Act. The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(b) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the original of the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(c) The decision when served shall constitute the final order of the Secretary.

(d) Upon service of this decision, the administrative remedies available to the parties have been exhausted.

RECORD

§ 40.271 Retention of official record.

(a) The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

(b) The official record of every completed administrative proceeding provided by this part, other than the record of an administrative hearing, shall be maintained and filed under the custody and control of the Administrator.

§ 40.272 Certification of official record.

(a) Upon timely receipt of either a notice pursuant to section 9(b)(3) of the Act or a petition pursuant to Section 11 of the Act, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings, under the custody and control of the Chief Administrative Law Judge. This shall include the record upon which any penalty may have been imposed or any order complained of which may have been entered.

(b) Upon the timely receipt of a petition under Section 11 of the Act, in any action in which no administrative hearing was held, the Administrator shall file with the appropriate United States District Court a full, true, and correct copy of any transcript of proceedings or record upon which the order complained of was entered.

APPENDIX B

FLCRA REGISTRATION FORM

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OMB Approval No. 044-R1269

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Wage and Hour Division

APPLICATION FOR A FARM LABOR CONTRACTOR CERTIFICATE OF REGISTRATION

Farm Labor Contractor Registration Act of 1963, as amended

Please read instructions before completing this application. No Farm Labor Contractor Certificate of Registration may be issued unless a completed form has been received (7 U.S.C. 2041 et. seq.).

1. Application for Certificate:

☐ Initial

☐ Renewal (Give number of last certificate of registration)

FOR OFFICIAL USE ONLY

Number:

Housing Authorized: ☐ Yes ☐ No

Transportation Authorized: ☐ Yes ☐ No

Reviewed By: Date:

Date WH-411 Issued:

2. The Applicant is a/an (Check one). If incorporated, give date and State of Corporation.

☐ Individual ☐ Corporation ☐ Cooperative

☐ Partnership ☐ Association ☐ Other *(Specify)*

Date _____

State _____

3. Applicant Identification: (Please Print)

Name *(Last, first, middle)*

Permanent Address (Number & Street, RFD, or P.O. Box, City or Town, State, Zip Code)

Telephone Number | Social Security Number

Social Security Employer Identification Number (If none, enter "none".)

4. Person Making Application (whether in person's own behalf or for a corporation, etc. If same as item 3, write "same as item 3".) (Print)

Name *(Last, first, middle)*

Address (Number & Street, RFD or P.O. Box, City or Town, State, Zip Code)

Telephone Number | Social Security Number

5. To be Completed by "Individual" applicant only (see item 2)

Height ____ ft, ____ in Weight _____ Color of: Eyes _____ Hair _____ ☐ Male ☐ Female

Date of Birth *(Mo., day, year)*:

Place of Birth:

6. Give Address to Which Notices and Documents Should be Sent.

7. Check Each Activity to be Performed Involving Migrant Workers for Agricultural Employment.

☐ Recruit ☐ Solicit ☐ Transport

☐ Hire ☐ Furnish

8. Give the Greatest Number of Agricultural Workers That Will be in the Crew(s) at Any Time.

9. Will Transportation be Provided the Workers?

☐ Yes (Give number and type of vehicles used to transport migrant workers.)

☐ No (Explain how workers are transported)

10. Will You Drive a Vehicle to Transport Workers? (To be completed by an "individual" applicant)

☐ Yes ☐ No If "Yes", Read instructions and complete the following:

Drivers License No. _____

State _____ Date Issued _____

Expiration Date _____. Vehicles Qualified to Operate:

Type _____ Capacity _____

Restriction(s):

11. Will the Applicant Farm Labor Contractor Own or Control Housing Which Will Be Used by Agricultural Workers in the Crew?

☐ Yes (Submit statement identifying all housing to be used and proof that such housing meets all applicable Federal and State safety and health standards.)

☐ No (Give the name and address of all persons who own or control housing to be used by workers in the crew.)

Form WH-410
Rev. July 1977

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12. Have you ever been convicted, under State or Federal law, of any of the following crimes?

a. Crimes involving robbery, extortion, bribery, embezzlement, grand larceny, burglary, arson violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage. ☐ No ☐ Yes

b. Gambling in connection with or incident to activities as a farm labor contractor; sale, distribution, or possession of alcoholic liquors in connection with or incident to activities as a farm labor contractor. ☐ No ☐ Yes

c. Any criminal charge relating to illegal aliens. ☐ No ☐ Yes

(If YES to any of the above, state crime and give date and place of conviction.)

13. The intended farm labor contracting activities will begin approximately *(month, day, year)*

Describe briefly your method of operation (crops, agricultural activity, places, etc.)

I certify that compensation is to be received for the intended farm labor contractor services and that all representations made by me in this application are true to the best of my knowledge and belief.

_____
(Applicant's Signature and Title)

Subscribed and sworn to before me this

_____ day of _____, 19__.

_____
(Officer Administering the Oath)

A false answer or misrepresentation to any question on this application will be punishable by fine or imprisonment (U.S. Code, title 18, sec. 1001).

APPENDIX C

RURAL MANPOWER MOBILITY PLAN (FORM MA 7-85)

OMb Approval No. 44-R1505

U.S. DEPARTMENT OF LABOR
Manpower Administration

RURAL MANPOWER MOBILITY PLAN

1. DATE FORM INITIATED

2. LEADER'S NAME (Last, First, Middle Initial)	3. SOCIAL SECURITY NO.	4. FLCR REGISTRATION NUMBER	5. CHANGES (C)/VERIFICATION (V)				
			Action	Loc. Ofc.	State	Date	Initials
6. HOME ADDRESS (Number, Street, City, State, ZIP)	7. HOME PHONE (Include area code)	8. NO. TRUCKS FOR HIRE					
		9. CATEGORY (check which) ☐ Crew ☐ Individual or unorganized Group ☐ Family					
10. ORIGINATING OFFICE ADDRESS (Street, City, State, ZIP)	11. PHONE NO. (Include area code)	12. RMS REP. (Initials)					
		13. LEADER FUNCTIONS (check) a. ☐ Supervises b. ☐ Transports c. ☐ Pays d. ☐ Assumes S.S. Responsibility Emp. Acct. No.					

14. ITINERARY

*Service and Status Codes for Column A below: 1. SCHEDULE 2. REVISED SCHEDULE 3. JOB REQUEST 4. SELF-COMMITMENT 5. HOME BASED 6. MANPOWER SERVICES 7. SUPPORTIVE SERVICES

* Service & Status Code	Dates (Month & Day) From	Dates (Month & Day) To	Employer's Name and Address (City, State, & Phone No.)	ESARS No. AHO	ESARS No. OHO	Activity	Group Composition: Workers Total	Workers 16 & over Male	Workers 16 & over Female	Workers Under 16	Nonworkers Total	Nonworkers 16 & Over	Nonworkers 6-15	Nonworkers Under 6	Total Individuals	Housing Requirements Total Fam.	Housing Requirements Unattached Male	Housing Requirements Unattached Female
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S

15. FAMILY INFORMATION

Name	No. in Fam	Manpower and Supportive Services Needed

16. COMMENTS

146

147

Replaces ES 369 which is obsolete.

MA 7-56

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APPENDIX D

PART 398

FEDERAL MOTOR CARRIER SAFETY REGULATIONS

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MOTOR CARRIER SAFETY REGULATIONS

Part 398 - Transportation of Migrant Workers

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
BUREAU OF MOTOR CARRIER SAFETY
WASHINGTON, D.C. 20590

DO NOT CIRCULATE
RETURN TO

PART 398—TRANSPORTATION OF MIGRANT WORKERS

Sec.

398.1 Definitions.
398.2 Applicability.
398.3 Qualifications of drivers or operators.
398.4 Driving of motor vehicles.
398.5 Parts and accessories necessary for safe operation.
398.6 Hours of service drivers; maximum driving time.
398.7 Inspection and maintenance of motor vehicles.
398.8 Commission inspection of motor vehicles in operation.

AUTHORITY: The provisions of this Part 398 issued under secs. 202, 204, 49 Stat. 544, as amended, 546, as amended; 49, U.S.C. 302, 304.

§ 398.1 Definitions.

(a) *Migrant worker.* "Migrant worker" means any individual proceeding to or returning from employment in agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)) or section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)).

(b) *Carrier of migrant workers by motor vehicle.* "Carrier of migrant worker by motor vehicle" means any person, including any "contract carrier by motor vehicle", but not including any "common carrier by motor vehicle", who or which transports in interstate or foreign commerce at any one time three or more migrant workers to or from their employment by any motor vehicle other than a passenger automobile or station wagon, except a migrant worker transporting himself or his immediate family.

(c) *Motor carrier.* "Motor carrier" means any carrier of migrant workers by motor vehicle as defined in paragraph (b) of this section.

(d) *Motor vehicle.* "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof, determined by the Commission, but does not include a passenger automobile or station wagon, any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation in street-railway service.

(e) *Bus.* "Bus" means any motor vehicle designed, constructed, and used for the transportation of passengers: Except passenger automobiles or station wagons other than taxicabs.

(f) *Truck.* "Truck" means any self-propelled motor vehicle except a truck tractor, designed and constructed primarily for the transportation of property.

(g) *Truck tractor.* "Truck tractor" means a self-propelled motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(h) *Semitrailer.* "Semitrailer" means any motor vehicle other than a "pole trailer", with or without motive power designed to be drawn by another motor vehicle and so constructed that some part of its weight rests upon the towing vehicle.

(i) *Driver or operator.* "Driver or operator" means any person who drives any motor vehicle.

(j) *Highway.* "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

§ 398.2 Applicability.

The regulations prescribed in this part shall be applicable to motor carriers of migrant workers, as defined in § 398.1 (b), only in the case of transportation of any migrant worker for a total distance of more than seventy-five miles, and then only if such transportation is across the boundary line of any State, the District of Columbia, or Territory of the United States, or a foreign country.

§ 398.3 Qualifications of drivers or operators.

(a) *Compliance required.* Every motor carrier, and its officers, agents, representatives and employees who drive motor vehicles or are responsible for the hiring, supervision, training, assignment or dispatching of drivers shall comply and be conversant with the requirements of this part.

(b) *Minimum physical requirements.* No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such

person possesses the following minimum qualifications:

(1) No loss of foot, leg, hand or arm.

(2) No mental, nervous, organic, or functional disease, likely to interfere with safe driving.

(3) No loss of fingers, impairment of use of foot, leg, fingers, hand or arm, or other structural defect or limitation, likely to interfere with safe driving.

(4) Eyesight: Visual acuity of at least 20/40 (Snellen) in each eye either without glasses or by correction with glasses; form field of vision in the horisontal meridian shall not be less than a total of 140 degrees; ability to distinguish colors, red, green and yellow; drivers requiring correction by glasses shall wear properly prescribed glasses at all times when driving.

(5) Hearing: Hearing shall not be less than 10/20 in the better ear, for conversational tones, without a hearing aid.

(6) Liquor, narcotics and drugs: Shall not be addicted to the use of narcotics or habit forming drugs, or the excessive use of alcoholic beverages or liquors.

(7) Initial and periodic physical examination of drivers: No person shall drive nor shall any motor carrier require or permit any person to drive any motor vehicle unless within the immediately preceding 36 month period such person shall have been physically examined and shall have been certified in accordance with the provisions of Subparagraph 8 hereof by a licensed doctor of medicine or osteopathy as meeting the requirements of this subsection.

(8) Certificate of physical examination: Every motor carrier shall have in its files at its principal place of business for every driver employed or used by it a legible certificate of a licensed doctor of medicine or osteopathy based on a physical examination as required by Subparagraph 7 hereof or a legible photographically reproduced copy thereof, and every driver shall have in his possession while driving, such a certificate or a photographically reproduced copy thereof covering himself.

(9) Doctor's certificate: The doctor's certificate shall certify as follows:

DOCTOR'S CERTIFICATE

(Driver of Migrant Workers)

This is to certify that I have this day examined ---------- in accordance with Section 398.3(b) of the Motor Carrier Safety Regulations of the Interstate Commerce Commission and that I find him

Qualified under said rules ☐

Qualified only when wearing glasses ☐

I have kept on file in my office a completed examination.

---------- ----------
(Date) (Place)

(Signature of examining doctor)

(Address of doctor)

Signature of driver----------

Address of driver ----------

(c) *Minimum age and experience requirements.* No person shall drive, nor shall any motor carrier require or permit any person to drive, any motor vehicle unless such person possesses the following minimum qualifications:

(1) *Age.* Minimum age shall be 21 years.

(2) *Driving skill.* Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

(3) *Knowledge of regulations.* Familiarity with the rules and regulations prescribed in this part pertaining to the driving of motor vehicles.

(4) *Knowledge of English.* Every driver shall be able to read and speak the English language sufficiently to understand highway traffic signs and signals and directions given in English and to respond to official inquiries.

(5) *Driver's permit.* Possession of a valid permit qualifying the driver to operate the type of vehicle driven by him in the jurisdiction by which the permit is issued.

§ 398.4 Driving of motor vehicles.

(a) *Compliance required.* Every motor carrier shall comply with the requirements of this part, shall instruct its officers, agents, representatives and drivers with respect thereto, and shall take such measures as are necessary to insure compliance therewith by such persons. All officers, agents, representatives, drivers, and employees of motor carriers directly concerned with the management, maintenance, operation, or driving of motor vehicles, shall comply with and be conversant with the requirements of this part.

(b) *Driving rules to be obeyed.* Every motor vehicle shall be driven in accordance with the laws, ordinances, and reg-

ulations of the jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Commission which impose a greater affirmative obligation or restraint.

(c) *Driving while ill or fatigued.* No driver shall drive or be required or permitted to drive a motor vehicle while his ability or alertness is so impaired through fatigue, illness, or any other cause as to make it unsafe for him to begin or continue to drive, except in case of grave emergency where the hazard to passengers would be increased by observance of this section and then only to the nearest point at which the safety of passengers is assured.

(d) *Alcoholic beverages.* No driver shall drive or be required or permitted to drive a motor vehicle, be in active control of any such vehicle, or go on duty or remain on duty, when under the influence of any alcoholic beverage or liquor, regardless of its alcoholic content, nor shall any driver drink any such beverage or liquor while on duty.

(e) *Schedules to conform with speed limits.* No motor carrier shall permit nor require the operation of any motor vehicle between points in such period of time as would necessitate the vehicle being operated at speeds greater than those prescribed by the jurisdictions in or through which the vehicle is being operated.

(f) *Equipment and emergency devices.* No motor vehicle shall be driven unless the driver thereof shall have satisfied himself that the following parts, accessories, and emergency devices are in good working order; nor shall any driver fail to use or make use of such parts, accessories, and devices when and as needed:

Service brakes, including trailer brake connections.
Parking (hand) brake.
Steering mechanism.
Lighting devices and reflectors.
Tires.
Horn.
Windshield wiper or wipers.
Rear-vision mirror or mirrors.
Coupling devices.
Fire extinguisher, at least one properly mounted.
Road warning devices, at least one red burning fusee and at least three flares (oil burning pot torches), red electric lanterns, or red emergency reflectors.

(g) *Safe loading*—(1) *Distribution and securing of load.* No motor vehicle shall be driven nor shall any motor carrier permit or require any motor vehicle to be driven if it is so loaded, or if the load thereon is so improperly distributed or so inadequately secured, as to prevent its safe operation.

(2) *Doors, tarpaulins, tailgates and other equipment.* No motor vehicle shall be driven unless the tailgate, tailboard, tarpaulins, doors, all equipment and rigging used in the operation of said vehicle, and all means of fastening the load, are securely in place.

(3) *Interference with driver.* No motor vehicle shall be driven when any object obscures his view ahead, or to the right or left sides, or to the rear, or interferes with the free movement of his arms or legs, or prevents his free and ready access to the accessories required for emergencies, or prevents the free and ready exit of any person from the cab or driver's compartment.

(4) *Property on motor vehicles.* No vehicle transporting persons and property shall be driven unless such property is stowed in a manner which will assure: (i) Unrestricted freedom of motion to the driver for proper operation of the vehicle; (ii) unobstructed passage to all exits by any person; and (iii) adequate protection to passengers and others from injury as a result of the displacement or falling of such articles.

(5) *Maximum passengers on motor vehicles.* No motor vehicle shall be driven if the total number of passengers exceeds the seating capacity which will be permitted on seats prescribed in § 398.5(f) when that section is effective. All passengers carried on such vehicle shall remain seated while the motor vehicle is in motion.

(h) *Rest and meal stops.* Every carrier shall provide for reasonable rest stops at least once between meal stops. Meal stops shall be made at intervals not to exceed six hours and shall be for a period of not less than 30 minutes duration.

(i) *Kinds of motor vehicles in which workers may be transported.* Workers may be transported in or on only the following types of motor vehicles: a bus, a truck with no trailer attached, or a semitrailer attached to a truck-tractor provided that no other trailer is attached to the semitrailer. Closed vans without windows or means to assure ventilation shall not be used.

(j) *Limitation on distance of travel in trucks.* Any truck when used for the transportation of migrant workers, if such workers are being transported in excess of 600 miles, shall be stopped for a period of not less than eight consecutive hours either before or upon completion of 600 miles travel, and either before or upon completion of any subsequent 600 miles travel to provide rest for drivers and passengers.

(k) *Lighting devices and reflectors.* No motor vehicle shall be driven when any of the required lamps or reflectors are obscured by the tailboard, by any part B of Part 393 of this subchapter and all lighting devices required by Subpart B of Part 393 of this subchapter shall be lighted during darkness or at any other time when there is not sufficient light to render vehicles and persons visible upon the highway at a distance of 500 feet.

(l) *Ignition of fuel; prevention.* No driver or any employee of a motor carrier shall: (1) Fuel a motor vehicle with the engine running, except when it is necessary to run the engine to fuel the vehicle; (2) smoke or expose any open flame in the vicinity of a vehicle being fueled; (3) fuel a motor vehicle unless the nozzle of the fuel hose is continuously in contact with the intake pipe of the fuel tank; (4) permit any other person to engage in such activities as would be likely to result in fire or explosion.

(m) *Reserve fuel.* No supply of fuel for the propulsion of any motor vehicle or for the operation of any accessory thereof shall be carried on the motor vehicle except in a properly mounted fuel tank or tanks.

(n) *Driving by unauthorized person.* Except in case of emergency, no driver shall permit a motor vehicle to which he is assigned to be driven by any person not authorized to drive such vehicle by the motor carrier in control thereof.

(o) *Protection of passengers from weather.* No motor vehicle shall be driven while transporting passengers unless the passengers therein are protected from inclement weather conditions such as rain, snow, or sleet, by use of the top or protective devices required by § 398.5(f).

(p) *Unattended vehicles; precautions.* No motor vehicle shall be left unattended by the driver until the parking brake has been securely set, the wheels chocked, and all reasonable precautions have been taken to prevent the movement of such vehicle.

(q) *Railroad grade crossings; stopping required; sign on rear of vehicle.* Every motor vehicle shall, upon approaching any railroad grade crossing, make a full stop not more than 50 feet, nor less than 15 feet from the nearest rail of such railroad grade crossing, and shall not proceed until due caution has been taken to ascertain that the course is clear; except that a full stop need not be made at:

(1) A street car crossing within a business or residence district of a municipality;

(2) A railroad grade crossing where a police officer or a traffic-control signal (not a railroad flashing signal) directs traffic to proceed;

(3) An abandoned or exempted grade crossing which is clearly marked as such by or with the consent of the proper state authority, when such marking can be read from the driver's position.

All such motor vehicles shall display a sign on the rear reading, "This Vehicle Stops at Railroad Crossings."

§ 398.5 Parts and accessories necessary for safe operation.

(a) *Compliance.* Every motor carrier, and its officers, agents, drivers, representatives and employees directly concerned with the installation and maintenance of equipment and accessories, shall comply and be conversant with the requirements and specifications of this part, and no motor carrier shall operate any motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(b) *Lighting devices.* Every motor vehicle shall be equipped with the lighting devices and reflectors required by Subpart B of Part 393 of this subchapter.

(c) *Brakes.* Every motor vehicle shall be equipped with brakes as required by Subpart C of Part 393 of this subchapter, except § 393.44 of this subchapter, and shall satisfy the braking performance requirements contained therein.

(d) *Coupling devices; fifth wheel mounting and locking.* The lower half of every fifth wheel mounted on any truck-tractor or dolly shall be securely affixed to the frame thereof by U-bolts of adequate size, securely tightened, or by other means providing at least equivalent

421

security. Such U-bolts shall not be of welded construction. The installation shall be such as not to cause cracking, warping, or deformation of the frame. Adequate means shall be provided positively to prevent the shifting of the lower half of a fifth wheel on the frame to which it is attached. The upper half of every fifth wheel shall be fastened to the motor vehicle with at least the security required for the securing of the lower half to a truck-tractor or dolly. Locking means shall be provided in every fifth wheel mechanism including adapters when used, so that the upper and lower halves may not be separated without the operation of a positive manual release. A release mechanism operated by the driver from the cab shall be deemed to meet this requirement. On fifth wheels designed and constructed as to be readily separable, the fifth wheel locking devices shall apply automatically on coupling for any motor vehicle the date of manufacture of which is subsequent to December 31, 1952.

(e) *Tires.* Every motor vehicle shall be equipped with tires of adequate capacity to support its gross weight. No motor vehicle shall be operated on tires which have been worn so smooth as to expose any tread fabric or which have any other defect likely to cause failure. No vehicle shall be operated while transporting passengers while using any tire which does not have tread configurations on that part of the tire which is in contact with the road surface. No vehicle transporting passengers shall be operated with re-grooved, re-capped, or re-treaded tires on front wheels.

(f) *Passenger compartment.* Every motor vehicle transporting passengers, other than a bus, shall have a passenger compartment meeting the following requirements:

(1) *Floors.* A substantially smooth floor, without protruding obstructions more than two inches high, except as are necessary for securing seats or other devices to the floor, and without cracks or holes.

(2) *Sides.* Side walls and ends above the floor at least 60 inches high, by attachment of sideboards to the permanent body construction if necessary. Stake body construction shall be construed to comply with this requirement only if all six-inch or larger spaces between stakes are suitably closed to prevent passengers from falling off the vehicle.

(3) *Nails, screws, splinters.* The floor and the interior of the sides and ends of the passenger-carrying space shall be free of inwardly protruding nails, screws, splinters, or other projecting objects, likely to be injurious to passengers or their apparel.

(4) *Seats.* On and after November 1, 1957, a seat shall be provided for each worker transported. The seats shall be: securely attached to the vehicle during the course of transportation; not less than 16 inches nor more than 19 inches above the floor; at least 13 inches deep; equipped with backrests extending to a height of at least 36 inches above the floor, with at least 24 inches of space between the backrests or between the edges of the opposite seats when face to face; designed to provide at least 18 inches of seat for each passenger; without cracks more than one-fourth inch wide, and the backrests, if slatted, without cracks more than two inches wide, and the exposed surfaces, if made of wood, planed or sanded smooth and free of splinters.

(5) *Protection from weather.* Whenever necessary to protect the passengers from inclement weather conditions, be equipped with a top at least 60 inches high above the floor and facilities for closing the sides and ends of the passenger-carrying compartment. Tarpaulins or other such removable devices for protection from the weather shall be secured in place.

(6) *Exit.* Adequate means of ingress and egress to and from the passenger space shall be provided on the rear or at the right side. Such means of ingress and egress shall be at least 18 inches wide. The top and the clear opening shall be at least 60 inches high, or as high as the side wall of the passenger space if less than 60 inches. The bottom shall be at the floor of the passenger space.

(7) *Gates and doors.* Gates or doors shall be provided to close the means of ingress and egress and each such gate or door shall be equipped with at least one latch or other fastening device of such construction as to keep the gate or door securely closed during the course of transportation; and readily operative without the use of tools.

(8) *Ladders or steps.* Ladders or steps for the purpose of ingress or egress shall be used when necessary. The maximum verticle spacing of footholds shall not

exceed 12 inches, except that the lowest step may be not more than 18 inches above the ground when the vehicle is empty.

(9) *Hand holds.* Hand holds or devices for similar purpose shall be provided to permit ingress and egress without hazard to passengers.

(10) *Emergency exit.* Vehicles with permanently affixed roofs shall be equipped with at least one emergency exit having a gate or door, latch and hand hold as prescribed in subparagraphs (7) and (9) of this paragraph and located on a side or rear not equipped with the exit prescribed in subparagraph (8) of this paragraph.

(11) *Communication with driver.* Means shall be provided to enable the passengers to communicate with the driver. Such means may include telephone, speaker tubes, buzzers, pull cords, or other mechanical or electrical means.

(g) *Protection from cold.* Every motor vehcile shall be provided with a safe means of protecting passengers from cold or undue exposure, but in no event shall heaters of the following types be used:

(1) *Exhaust heaters.* Any type of exhaust heater in which the engine exhaust gases are conducted into or through any space occupied by persons or any heater which conducts engine compartment air into any such space.

(2) *Unenclosed flame heaters.* Any type of heater employing a flame which is not fully enclosed.

(3) *Heaters permitting fuel leakage.* Any type of heater from the burner of which there could be spillage or leakage of fuel upon the tilting or overturning of the vehicle in which it is mounted.

(4) *Heaters permitting air contamination.* Any heater taking air, heated or to be heated, from the engine compartment or from direct contact with any portion of the exhaust system; or any heater taking air in ducts from the outside atmosphere to be conveyed through the engine compartment, unless said ducts are so constructed and installed as to prevent contamination of the air so conveyed by exhaust or engine compartment gases.

(5) Any heater not securely fastened to the vehicle.

§ 398.6 Hours of service of drivers; maximum driving time.

No person shall drive nor shall any motor carrier permit or require a driver employed or used by it to drive or operate for more than 10 hours in the aggregate (excluding rest stops and stops for meals) in any period of 24 consecutive hours, unless such driver be afforded eight consecutive hours rest immediately following the 10 hours aggregate driving. The term "24 consecutive hours" as used in this part means any such period starting at the time the driver reports for duty.

§ 398.7 Inspection and maintenance of motor vehicles.

Every motor carrier shall systematically inspect and maintain or cause to be systematically maintained, all motor vehicles and their accessories subject to its control, to insure that such motor vehicles and accessories are in safe and proper operating condition.

§ 398.8 Commission inspection of motor vehicles in operation.

(a) *Commission personnel authorized to perform inspections.* The Chief and Assistant Chief of the Section of Field Service and the Section of Motor Carrier Safety, and all field safety specialists, mechanical engineers, safety supervisors, district supervisors, rate agents and safety inspectors employed in the Bureau of Motor Carriers are authorized and hereby ordered, to enter upon and perform inspections of motor carriers' vehicles in operation.

(b) *Prescribed inspection report.* Form MCS 63, Driver-Equipment Compliance Check, shall be used to record findings from motor vehicles selected for final inspection by authorized Commission employees.

(c) *Motor vehicles declared "out of service".* (1) Authorized Commission employees shall declare and mark "out of service" any motor vehicle which by reason of its mechanical condition or loading is so imminently hazardous to operate as to be likely to cause an accident or a breakdown. Form MCS 64, "Out of Service Vehicle" sticker shall be used to mark vehicles "out of service."

(2) No motor carrier shall require or permit any person to operate nor shall any person operate any motor vehicle declared and marked, "out of service" until all repairs required by the "out of service notice" on Form MCS 63 have been satisfactorily completed. The term operate as used in this section shall include towing the vehicle; provided, however, that vehicles marked "out of serv-

ice" may be towed away by means of a vehicle using a crane or hoist; and provided further, that the vehicle combination consisting of the emergency towing vehicle and the "out of service" vehicle meets the performance requirements of § 393.52.

(3) No person shall remove the "Out of Service Vehicle" sticker from any motor vehicle prior to completion of all repairs required by the "out of service notice" on Form MCS 63.

(4) The person or persons completing the repairs required by the "out of service notice" shall sign the "Certification of Repairman" in accordance with the terms prescribed on Form MCS 63, entering the name of his shop or garage and the date and time the required repairs were completed. If the driver completes the required repairs, he shall sign and complete the "Certification of Repairman."

(d) *Motor carrier's disposition of Form MCS 63.* (1) Motor carriers shall carefuly examine Forms MCS 63. Any and all violations or mechanical defects noted thereon shall be corrected. To the extent drivers are shown not to be in compliance with the Motor Carrier Safety Regulations, appropriate corrective action shall be taken by the motor carrier.

(2) Motor carriers shall complete the "Motor Carrier Certification of Action Taken" on Form MCS 63 in accordance with the terms prescribed thereon. Motor carriers shall return Forms MCS 63 to the District Director of the Bureau of Motor Carriers at the address indicated upon Form MCS 63 within fifteen (15) days following the date of the vehicle inspection.

APPENDIX E

RESOURCE PERSONS IN THE THREE MIGRANT STREAMS

RESOURCE PERSONS IN THE THREE MIGRANT STREAMS

1. Eastern Stream

Visited or had conversations with:

Ralph Alewine
1371 Peachtree Street, Room 434
Atlanta. Georgia

Jim Aloins
Migrant Labor Camp Section
State Department of Health
Tower Building, Empire State Plaza
Albany, New York

Ray Arrizola
Maryland State Department of Education
Migrant Educations
Box 468
Salisbury, Maryland

Kevin Boyd
MSFA, Inc.
Richmond, Virginia

Mario Gomes
Department of Labor and Industry
Labor and Industry Building
Trenton, New Jersey

Richard Joanis
Migrant and Seasonal Farmworker Association, Inc.
3929 Western Boulevard
Raleigh, North Carolina

Gene Schultz
Virginia Employment Office
Richmond, Virginia

Roy Thomas
North Carolina Manpower Office
Migrant and Seasonal Farmworkers Divisions
Dunn, North Carolina

Jim Wells
Rural Manpower Office
P.O. Box 27625
Raleigh, North Carolina

Howard Winrow
Office of Agricultural Worker Compliance
Department of Labor and Industry
Labor and Industry Building
Trenton, New Jersey

2. Midwestern Stream

Visited or had conversations with:

Alfredo Garcia
State Farmworker Program
Office of Manpower Development
150 West Market Street, 7th Floor
Indianapolis, Indiana

Robert Genera
Economic Opportunity Development Corporation
410 S. Main Street
San Antonio, Texas

Marvin Johansen
Agricultural Labor Camp Section
3500 North Logan
Lansing, Michigan

Bob Munoz
Allied Migrant Council
Chicago, Illinois

Rogelio Perez
Governor's Office of Migrant Affairs
Sam Houston Building, Room 108
Austin, Texas

Fidel Ramirez
Community Action Program
Community Services Administrations
Laredo, Texas

3. West Coast Stream

Visited or had conversations with:

Ernest Aguilar
Equal Opportunity Office - CSA
Auburn, Washington

Bob Allen
Department of Housing and Community
Division of Codes and Standards
921 - 10th Street
Sacramento, California

Cruz Bustamente
Greater California Education Project
1015 Fulton Mall
Fresno, California

Regino de Leon
Greater California Education Project
1015 Fulton Mall
Fresno, California

Patricio Lucero
Greater California Education Project
1015 Fulton Mall
Fresno, California

Manuel V. Ceja
Office of Compensatory Education
State Department of Education
Sacramento, California

Elia Duran
Department of Education, Migrant Division
Sacramento, California

Jesse Farias
Employment Security Department
Yakima, Washington

Roger Granados
La Cooperativa
Sacramento, California

Pat McClay
EF & R
Employment Development Department
Sacramento, California

Gil Padilla
United Farmworkers Union
Keene, California

Douglas Patino
Planning and Research
Employment Development Department
Sacramento, California

Maria Rentera
Adela Development Corporation
623 South Second Street, East
Salt Lake City, Utah

Narciso Rodriquez
La Raza Unida de Ohio
1007 Revere Drive
Bowling Green, Ohio

Jose Saldana
Colorado Council of Agricultural Workers
3370 Berkeley Drive
Boulder, Colorado

Katy Sarriz
Associated Migrant Opportunity Services
2802 North Delaware
Indianapolis, Indiana

Jack Spooner
Migrant Division
Texas Employment Commission
San Antonio, Texas

Jose Valdez
Minnesota Migrant Council
618 South Second Street
Saint Cloud, Minnesota

Jaime Vega
Juarez-Lincoln Center
National Migrant Information Clearinghouse
30001 S. Congress Avenue
Austin, Texas

Bob Witely
Illinois Department of Public Health
Division of Sanitary Engineering
535 West Jefferson Street, Building 2
Springfield, Illinois

Adalberto Ramirez
Campesinos Unidos, Inc.
620 North 10th Street
Brawley, California

Arnoldo Resendez
Campesinos Unidos, Inc.
620 North 10th Street
Brawley, California

Edmundo Velez
Office of Migrant Services
Employment Development Department
915 Capitol Mall, Room 229
Sacramento, Falifornia

Luis M. Contreras
Office of Migrant Services
Employment Development Department
915 Capitol Mall, Room 229
Sacramento, California

Fred Wolff
Office of Compensatory Education
State Department of Education
721 Capitol Mall
Sacramento, California 95814

Jose Ybarra
Employment Development Department
800 Capitol Mall
Sacramento, California 95814

APPENDIX F

CONTRACTORS - IMPERIAL VALLEY

CALIFORNIA

CONTRACTORS - IMPERIALS VALLEY, CALIFORNIA

Joe Anaya
3525 Highway 111
Imperial 92251
714-344-8464

Araujo & Guillen
1065 Main Street
Brawley 92227
714-344-3887, 0542, 2399

John F. Baretta
85 W. Eddins Road
Calipatria 92233
714-348-5108

Juan Chavez
121 E. Main Street
Calipatria 92233
714-348-2792

Don P. Currier
21 W. McKinley
Calexico 92231
714-352-6801

Desert Growers Association
209 E. Highway 78
Brawley 92227
714-344-4650, 4652

Jose M. Estrada
1111 E. Street
Brawley 92227
714-344-4622

Imperial Valley Farms Association, Inc.
320 W. 2nd Street
Calexico 92231
714-352-6801

Don Lydick
632 West Main Road
El Centro 92243
714-352-9618

Constantino P. Martinez
961 Lee
Calexico 92231
714-357-2846

Joe C. Ramirez & Son
931 Heber
Calexico 92231
714-357-3414, 3006

Southwest Farm Labor
113 W. 7th
Calexico 92231
714-357-3215

Sun Valley Harvest, Inc.
220 W. Main
Brawley 92227
714-344-5060, 9351 (yard)

APPENDIX G

CONTRACTORS - RIO GRANDE VALLEY

TEXAS

CONTRACTORS - RIO GRANDE VALLEY, TEXAS

Raymundo G. Castillo
2717 Mercer
Laredo

Clarence E. Counterman
185 Pearl Lane
El Paso
715-778-1326

Alberto De Leon
1119 W. Shunior
Edinburg

Roberto Flores
McAllen
512-682-2798

Domingo Garcia
Pharr
512-781-9013

Samuel Garcia
McAllen
512-686-3140

Domingo Gonzales
Harlingen
512-423-4038

Juan Hernandez
Crystal City
512-374-2476

Matis Herrera
Route 1, Box 519
Edinburg
512-383-8093

Guadalupe Longoria
589 Bonham Street
San Benito
512-399-7518

Isaac Martinez
627 Diana Street
San Benito

Jesus Salinas
304 W. Zapata Street
Crystal City
512-374-2436

APPENDIX H

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BIBLIOGRAPHICAL RESOURCES

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C. General

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GENERAL RESOURCES

A. National Private Organizations

American Trucking Association
1616 P Street, N.W.
Washington, D.C.

Highway Loss Data Institute
600 New Hampshire Avenue, N.W.
Washington, D.C.

Insurance Services Office
910 17th Street, N.W.
Washington, D.C.

The Insurance Institute for Highway Safety
600 New Hampshire Avenue, N.W.
Washington, D.C.

National Council of La Raya
1725 I Street, N.W.
Washington, D.C.

National Safety Council
1735 De Sales Street, N.W.
Washington, D.C.

National Association of Farmworkers Organizations
1329 E Street, N.W.
Washington, D.C.

United Farmworkers Union (AFL-CIO)
3166 Mount Pleasant Street, N.W.
Washington, D.C.

U.S. Catholic Conference
1312 Massachusetts Aveneue, N.W.
Washington, D.C.

B. U.S. Government

National Highway Safety Administration
400 7th Street, N.W.
Washington, D.C.

U.S. Department of Transportation
7th and D Streets, S.W.
Washington, D.C.

U.S. Department of Labor
Wage and Hour Division (Employment Standards Administration)
200 Constitution Avenue, N.W.
Washington, D.C.

U.S. Senate, Subcommittee on Employment, Poverty, and Migratory Labor,
Committee on Labor and Public Welfare